Supreme Court, U.S.
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Nos. 93-762 and 93-1094

In the Supreme Court of the United States

OCTOBER TERM, 1993

JEROME B. GRUBART, INC., *Petitioner,*

v.

GREAT LAKES DREDGE & DOCK COMPANY, *Respondent.*

CITY OF CHICAGO, *Petitioner,*

v.

GREAT LAKES DREDGE & DOCK COMPANY and JEROME B. GRUBART, INC., *Respondents.*

On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit

JOINT APPENDIX

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The following opinions, decisions, judgments, and orders have been omitted from this joint appendix because they appear on the following pages in the appendices to the Petitions for Writ of Certiorari (Nos. 93-762 & 93-1094):

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Opinion of the United States District Court for the Northern District of Illinois, dated February 18, 1993 ..... App. 22-52

Opinion of the United States Court of Appeals for the Seventh Circuit, dated August 24, 1993 ..... App. 1-15

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Order of the United States Court of Appeals for the Seventh Circuit denying Great Lakes' motion to reconsider order granting stay of the mandate, entered on October 21, 1993 ..... App. 21

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Opinion of the United States Court of Appeals for the Seventh Circuit, dated August 24, 1993 ..... 1a-15a

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Nos. 93-762 and 93-1094

IN THE

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On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit

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JOINT APPENDIX

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Civil Docket for Case #92 CV 6754
Filed 10/6/92

* * * *

10/6/92—COMPLAINT—Civil cover sheet.

* * * *

10/6/92—AFFIDAVIT of Mark R. Thomas of value and pending freight.

10/6/92—MOTION by plaintiff for entry of orders ancillary to its complaint for exoneration from or limitation of liability.

* * * *

10/8/92—AGREED ORDER regarding motion for entry of orders ancillary to its complaint for exoneration from or limitation of liability.

10/8/92—ORDER for ad interim stipulation regarding motion for entry of orders ancillary to its complaint for exoneration from or limitation of liability.

10/8/92—MINUTE ORDER of 10/8/92 by Hon. Charles P. Kocoras: Granting in part and denied in part plaintiff's motion for entry of orders ancillary to its complaint for exoneration from or limitation of liability. Enter order for ad interim stipulation.

10/8/92—AD INTERIM STIPULATION and cost bond.

* * * *

11/2/92—MEMORANDUM by plaintiff in opposition to certain potential claimants' motion to lift the stay.

* * * *

11/3/92—MOTION by Julie Mome Inc, G.P. Antons Restaurant & Lounge, Dr. Richard Cook, Tiffany Wilson, et al., Merced E. Zuniga, et al., M.J. Miller & Co., Inc., et al., Norman C. Berliant, et al., plaintiffs in the consolidated class action commonly known as In Re Chicago Flood Litigation for partial lift of stay; notice of motion.

* * * *

11/3/92—MINUTE ORDER of 11/3/92 by Hon. Charles P. Kocoras: Denying plaintiffs in 92 L 5422, pending in the Circuit Court of Cook County, motion for partial lift of stay.

* * * *

11/5/92—MOTION by plaintiffs Hugh C Michels & Co, Kanter & Mattenson Ltd, Merit Insurance Co, Aera Crockett, M J Miller & Co Inc, Edwin J. Mills, Capitol Snax Inc, Dr. Richard Cook, Tiffany Wilson, Le Pecque Women's Apparel, Jac-Lin, Merced E Zuniga, Dr. Donald L. Hohman, AVCOA Inc, Jolie Mome Inc, Marilyn Hollander, Norman C Berliant, Fish Port Inc, Fisherman's Paradise Inc, Hedlund Corp, Hoe Know Chinese Restaurant Ltd, Oriental Electronics Inc, R & L Fashions Inc, Randolph Flower Shop Inc, Soul by the Pond Inc, Royal Redemption Center Inc, Young Sik Jong for intervention.

* * * *

11/5/92—MEMORANDUM by plaintiff Great Lakes Dredge & Dock Co in opposition to certain potential claimants' motion to intervene.

* * * *

11/5/92—ADMIRALTY CLAIM by claimant First Natl Bk of Chgo.

* * * *

11/6/92—MINUTE ORDER of 11/6/92 by Hon. Charles P. Kocoras: Denying Hugh C. Michels & Co. et al's pending motion for intervention with leave to reinstate the motion later, if needed. Said parties are given leave to file claim and answer pursuant to Rule F of the Supplemental Rules for Admiralty and Maritime proceedings.

* * * *

11/6/92—CLAIM by claimant Jerome B Grubart Inc with answer.

* * * *

11/6/92—ANSWER by claimant Jerome B Grubart Inc with claim.

* * * *

11/16/92—MOTION by defendant to dismiss the complaint.

11/16/92—MEMORANDUM by defendant in support of its motion to dismiss the complaint.

11/16/92—APPENDIX filed by defendant to motion to dismiss the complaint.

* * * *

11/16/92—MOTION by claimant Jerome B Grubart Inc to dismiss count I of plaintiff's complaint.

11/16/92—MEMORANDUM by claimant Jerome B Grubart Inc in support of motion to dismiss count I of plaintiff's complaint.

11/16/92—APPENDIX filed by claimant Jerome B Grubart Inc to memorandum in support of motion to dismiss count I of plaintiff's complaint.

* * * *

12/1/92—MEMORANDUM by plaintiffs Great Lakes Dredge & Dock Company in opposition to Bally Manufacturing's petition to intervene; Certificate of service.

12/2/92—RULE 24 PETITION by petitioner Bally Mfg Corp to intervene.

12/2/92—MEMORANDUM by petitioner Bally Mfg Corp of law in support of its Rule 24 petition to intervene.

* * * *

12/2/92—ORAL MOTION by Bally Mfg Corp to join City of Chicago's motion to dismiss.

12/2/92—MINUTE ORDER of 12/2/92 by Hon. Charles P. Kocoras. Granting Bally Manufacturing Corp's oral motion to join City of Chicago's motion to dismiss. Denying Bally's petition to intervene as moot.

* * * *

12/7/92—MEMORANDUM by plaintiff Great Lakes Dredge & Dock Co in opposition to the motions to dismiss.

12/7/92—APPENDIX of exhibits filed by plaintiff Great Lakes Dredge & Dock Co.

12/14/92—REPLY MEMORANDUM by defendant in support of its motion to dismiss.

* * * *

12/15/92—REPLY MEMORANDUM by claimant Jerome B Grubart Inc in support of motion to dismiss count I of plaintiff's complaint.

* * * *

12/16/92—AFFIDAVIT of Richard H. Heiss as supplement to reply memorandum in support of motion to dismiss count I of plaintiff's complaint.

12/17/92—MOTION by claimant Jerome B Grubart Inc to strike the exhibits and affidavits.

* * * *

12/22/92—MEMORANDUM by plaintiff Great Lakes Dredge & Dock Co of law in opposition to Grubart's motion to strike.

* * * *

2/10/93—MINUTE ORDER of 2/10/93 by Hon. Charles P. Kocoras: Ruling on pending motion to strike the exhibits and affidavits, motion to dismiss the complaint, motion to dismiss count I of plaintiff's complaint set for 2/18/93 at 9:30 a.m.

2/18/93—MEMORANDUM OPINION.

2/18/93—ENTERED JUDGMENT.

2/18/93—ORAL MOTION by plaintiff to extend the stay.

2/18/93—MINUTE ORDER of 2/18/93 by Hon. Charles P. Kocoras: Ruling held. Enter memorandum opinion: Granting pending motions to dismiss. All other pending motions, if any, are hereby moot. Granting Great Lakes Dredge & Dock Co.'s oral motion to extend the stay. The court hereby extends the present stay until 02/25/93.

2/19/93—EMERGENCY NOTICE OF APPEAL by plaintiff Great Lakes Dredge from order, from judgment entered, from motion minute order.

2/19/93—JURISDICTIONAL STATEMENT by plaintiff Great Lakes Dredge regarding appeal.

* * * *

3/8/93—TRANSCRIPT of proceedings for the following date(s): 10/08/92, 11/03/92, 11/05/92, 12/02/92, 12/17/92 and 02/18/93 Before Honorable Charles P. Kocoras.

* * * *

J.A. 7

CITY OF CHICAGO
DEPARTMENT OF PUBLIC WORKS
BUREAU OF ENGINEERING

CONDITION REPORT
OF PROTECTIVE
TIMBER PILE CLUSTERS
AT VARIOUS BRIDGES

Condition Report on Existing Conditions of Protective Timber Pile Clusters and Recommendations of Required Repairs for Various Bridges.

Prepared by:

/s/ FRANK OCIEPKA
Frank Ociepka
Mgr. Bridge Operations and Maintenance

Approved by:

/s/ TED KACZKOWSKI
Ted Kaczkowski
Chief Bridge Engineer

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DRAWINGS OF VARIOUS BRIDGES NEEDING NEW PROTECTIVE CLUSTERS

PHOTOGRAPHS SHOWING CONDITIONS OF VARIOUS PROTECTIVE TIMBER PILE CLUSTERS

INTRODUCTION

The purpose of this report is to describe the extent of deterioration of the protective timber pile clusters at various bridges and to recommend remedial measures to correct the hazardous conditions created by this deterioration. Also, included is a preliminary cost estimate for replacing these clusters to restore the bridges to a safe condition.

EXISTING CONDITIONS

Protective timber pile clusters, also known as timber dolphins, are installed in the waterways adjacent to bridges to protect them from damage from passing vessels which may drift from the boundaries of the navigational channel.

A survey was recently conducted to determine the conditions of the protective timber pile clusters of the drawbridges on the navigable waterways. As a result of this

survey it was determined that the serviceable life of various clusters has been exhausted and are in need of immediate replacement in order to protect the bridges from potential damage from vessel collisions.

RECOMMENDATIONS

It is recommended that one or more new protective clusters be installed at the following drawbridges:

1. Chicago Avenue Drawbridge over the North Branch of the Chicago River.
2. Kinzie Street Drawbridge over the North Branch of the Chicago River.
3. Madison Street Drawbridge over the South Branch of the Chicago River.
4. Washington Street Drawbridge over the South Branch of the Chicago River.
5. Cermak Road Drawbridge over the South Branch of the Chicago River.

COST ESTIMATE

It is estimated that 14 deteriorated protective clusters and appurtenances must be removed and replaced at a total estimated cost of $750,000.

EXECUTION OF CITY/STATE PROJECT AGREEMENT FOR REPLACEMENT OF PILE CLUSTERS AT VARIOUS BRIDGES THROUGHOUT CITY

* * * *

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. The Mayor is authorized to execute, the City Clerk to attest to and the Commissioner of Public Works to approve, subject to the review of the Corporation Counsel as to form and legality, a project agreement with the State of Illinois providing for the replacement of pile clusters at various bridges throughout the City, said agreement to be substantially in the following form:

[City/State Project Agreement immediately follows Section 3 of this ordinance.]

SECTION 2. That the City Clerk is hereby directed to transmit two (2) certified copies of this ordinance to the Division of Highways, Department of Transportation of the State of Illinois through the District Engineer of District I of said Division of Highways.

SECTION 3. That this ordinance shall be in full force and effect from and after its passage.

City/State Project Agreement attached to this ordinance reads as follows:

City/State Project Agreement.

Replacement Of Pile Clusters
At Various Bridges Throughout The City.

City Section No.: _____
State Job No.: _____
D.P.W. Job No.: _____

This Agreement, entered into this ____ day of _____, 19____ by and between the State of Illinois, acting through its Department of Transportation, hereinafter called the "State", and the City of Chicago, acting through its Department of Public Works, hereinafter called the "City".

Witnesseth:

Whereas, The State and the City, in the interest of the safe and efficient movement of vehicular and pedestrian traffic, find it necessary to proceed with the replacement of pile clusters at various bridges throughout the City, hereinafter referred to as the "Project" and described in numbered paragraph 8 of this Agreement; and

Whereas, The Department of Transportation of the State of Illinois, under Chapter 121, Article 4-409 of the Illinois Revised Statutes, as currently in effect, may enter into a written contract with any other highway authority for the jurisdiction, maintenance, administration, engineering or improvement of any highway or portion thereof; and

Whereas, On June 30, 1989, the State and the City entered into a Memorandum of Understanding regarding the funding of a Five-Year Road Program in Chicago, concluding with the end of State Fiscal Year 1994, and the Section 3 line item of that Memorandum which provides $20,000,000 for City bridge capital improvements to be obligated by the City is the basis for State funds provided under this Agreement; and

Whereas, The State and the City have concurred that the Project qualifies for the use of such funds.

The State Hereby Agrees:

1. To reimburse the City 100% of the costs incurred in connection with the contract construction, and

construction engineering/supervision of the Project, as hereinafter provided in numbered paragraph 9, upon receipt of progressive billings supported by documentation as required by the State.

The City Hereby Agrees:

2. Upon approval by the State, to let and award a contract for the Project, to provide and/or cause to be provided all construction engineering/supervision, in accordance with established procedures of the City and State.

3. To finance the work pending progressive reimbursement by the State of the costs involved, to appropriate such funds as are necessary therefore [sic], and to prepare a complete and accurate breakdown of the costs of the Project.

4. To comply with all applicable Executive Orders and legislation pursuant to the Equal Employment Opportunity and Nondiscrimination Regulations as may be required by the State and under federal law.

5. To retain all Project records and to make them available for audit by State auditors during the Project construction, and for a period of three (3) years after final acceptance of the Project by the parties hereto.

The Parties Hereto Mutually Agree:

6. That, upon completion of the improvement, the City and the State will maintain or cause to be maintained, in a satisfactory manner, their respective portions of the improvement in accordance with established jurisdictional authority.

7. That prior to initiation of work to be performed hereunder, the disposition of encroachments will be cooperatively determined by representatives of the City and State.

8. That said Project generally consists of the replacement of pile clusters at various bridges within the City, in order to provide the structures with increased protection from the possibility of collision by marine traffic. Deteriorated timber pile clusters will be removed and replaced with new steel pipe pile clusters. All other appurtenances necessary to complete the Project will also be provided.

9. That the estimated costs of the Project covered and described by this Agreement are:

Contract Construction	$680,000
Construction Engineering/Supervision	70,000
TOTAL:	$750,000

and that 100% of the actual final costs will be paid by the State up to a maximum of $750,000, with any cost in excess of that amount to be paid by the City, or otherwise provided by amendment to this Agreement.

10. That the City shall be responsible for 100% of the cost of any work not eligible for State participation.

11. That the Commissioner of Public Works is authorized to execute revisions to this Agreement relative to budgetary items, upon approval by Illinois Department of Transportation, as long as such revisions do not increase the total cost of the Project ($750,000) as authorized by the City Council.

12. That this Agreement and the covenants contained herein shall be void ab initio in the event the construction work contemplated herein is not completed by June 1, 1993.

13. That all prior Agreements, or portions thereof, between the City and the State which refer to the construction of this Project are superseded by this Agreement.

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

The Local Agency certifies to the best of its knowledge and belief its officials:*

(1) are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;

(2) have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction: violation of federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

---

* The Local Agency for purpose of this certification is defined as the Department of Public Works of the City of Chicago. Officials for the purpose of this certification are the Mayor of the City of Chicago, the Commissioner of the Department of Public Works, the Purchasing Agent and the Comptroller of the City of Chicago.

(3) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in item (2) of this certification;

(4) have not within a three-year period preceding this Agreement had one or more public transactions (federal, state of local) terminated for cause or default;

(5) have not been barred from signing this Agreement as a result of a violation of Sections 33E-3 and 33E-4 of the Criminal Code of 1961 (Chapter 38 of the Illinois Revised Statutes);

(6) are not in default on an educational loan as provided in Public Act 85-827; and

(7) have not been barred from signing this Agreement as a result of a violation of Chapter 127, Section 10.2 of the Illinois Revised Statutes.

In Witness Whereof, The City and State have caused this Agreement to be executed by their respective officials and attested to on the date hereinafter listed.

[Signature lines omitted]

VARIOUS DRAWBRIDGES
NEW PILE CLUSTERS
D.P.W. PROJECT NO. E-0-469

CITY SECTION: 90-E0469-00-BR
JOB NO. C-88-025-90
STATE SECTION: 1990-078I

SPECIFICATIONS AND CONTRACT DOCUMENTS
NO. PE04699001

CITY OF CHICAGO
RICHARD M. DALEY
Mayor

Prepared by
DEPARTMENT OF PUBLIC WORKS
BUREAU OF ENGINEERING
DAVID S. WILLIAMS, JR.
Commissioner
Room 406, City Hall
Chicago, Illinois 60602
LOUIS KONCZA
City Engineer

Issued by
DEPARTMENT OF PURCHASES,
CONTRACTS AND SUPPLIES
ALEXANDER GRZYB
Acting Purchasing Agent
October 1990

Bids To Be Executed In Triplicate
All Signatures To Be
Sworn To Before A Notary Public

* * * *

REQUIREMENTS FOR BIDDING AND INSTRUCTIONS FOR BIDDERS

CONTRACT FOR WORK

* * * *

3. EXAMINATION BY BIDDER

The bidder shall, before submitting his bid, carefully examine the proposal, plans, specifications, contract documents and bonds. He shall inspect in detail the site of the proposed work and familiarize himself with all the local conditions affecting the contract and the detailed requirements of construction. If his bid is accepted, he will be responsible for all errors in his proposal resulting from his failure or neglect to comply with these instructions. The City will, in no case, be responsible for any change in anticipated profits resulting from such failure or neglect.

Unless otherwise provided in Special Conditions, when the plans or specifications include information pertaining to subsurface exploration, borings, test pits, and other preliminary investigation, such information represents only the opinion of the City as to the location, character, or quantity of the materials encountered and is only included for the convenience of the bidder. The City assumes no responsibility whatever in respect to the sufficiency or accuracy of the information, and there is no guaranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the work, or that unanticipated developments may not occur.

* * * *

GENERAL CONDITIONS

* * * *

2. INDEMNITY

Contractor shall indemnify, keep and save harmless the City, its agents, officials and employees, against all injuries, deaths, loss, damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, which may in anywise accrue against the City in consequence of the granting of this contract or which may in any wise result therefrom, whether or not it shall be alleged or determined that the act was caused through negligence or omission of the Contractor or his employees, of the subcontractor or his employees, if any, and the Contractor shall, at his own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the City in any such action, the Contractor shall, at his own expense, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City as herein provided.

* * * *

SPECIAL CONDITIONS FOR PUBLIC WORKS CONSTRUCTION

* * * *

101.2. Intent of Plans and Specifications

The intent of the plans and specifications is to prescribe an outline of work which the Contractor undertakes to do in full compliance with the Contract. The Contractor shall do all work as provided in the Contract and such additional, extra, collateral and incidental work as may be necessary to complete the work in an acceptable manner. He shall furnish all required materials, equipment,

tools, labor, temporary light and power, shop plans, working drawings, and incidentals, unless otherwise provided in the Contract, and shall include the cost of these items in the contract unit and lump sum prices for the several units of work.

The specifications and plans are not intended to cover every detail of materials, parts, or construction. The Contractor shall furnish all materials, parts, and labor necessary to fully complete the entire work, whether or not said details are particularly shown or specified, all at no additional cost to the City.

* * * *

Before the Contractor physically begins the contract work, he shall check the City's Plans and Specifications. Should any errors, discrepancies or omissions be found in these Plans and Specifications or any discrepancy found between the Plans and the physical conditions at the site or in any subsequent drawings that may be provided thereafter, the Contractor shall notify the Commissioner, in writing, immediately. Any work done after such discovery, unless authorized by the Commissioner, will be done at the Contractor's expense. All work shall conform to the checked and corrected Plans and Specifications. The Contractor will not be allowed to take advantage of any error, omission or discrepancy in the Contract.

* * * *

101.7. Work by Contractor's Organization

Except as hereinafter specified, the Contractor shall perform with his own organization and forces not less than 25% of the total amount of work under this Contract which is performed at the site, computed on the basis of cost. The Contractor shall require each subcontractor to familiarize himself with all provisions of the Contract Documents which may affect his work.

Whenever the State of Illinois Department of Transportation, the Federal Highway Administration, or the Fed-

eral Aviation Administration supplies any of the funds for the work under this Contract, the amount of work by the Contractor's organization shall be as specified in the applicable sections of the Standard Specifications for Road and Bridge Construction of the Illinois Department of Transportation, Form FHWA 1273 of the Federal Highway Administration or the Standards for Specifying Construction of Airports of the Federal Aviation Administration, as the case may be.

* * * *

103.4. Plant, Procedure, Methods and Equipment

The Contractor shall determine the methods to be employed, the procedure to be followed, the equipment, plant, falsework, shoring, bracing and other temporary structures and equipment to be used on the work under this Contract, subject to the requirements of the Contract Documents and to the approval of the Commissioner. Only adequate and safe procedure, methods, structures and equipment shall be used.

The Contractor shall submit to the Commissioner for approval the order of procedure he proposes to follow in constructing the work and such procedure shall include the construction schedule.

Work shall be begun only after the Contractor's proposed order of procedure in performing the work, the construction schedule and the methods, structures and equipment to be employed by him thereon shall have been submitted to and approved by the Commissioner in writing. It is understood by the Contractor that a reasonable amount of time will be required by the Commissioner for the examination of said procedure and construction schedule.

As work progresses, changes or modifications in such procedure and construction schedule, or in such methods, structures and equipment may be required by the Commissioner. In such event, upon notice from the Commissioner to the Contractor, further work shall be performed only in accordance with such changed or modified proce-

dure and construction schedule, and such changed or modified methods, structures and equipment, as the case may be, as shall have been submitted to and approved by the Commissioner in writing.

The Commissioner may disapprove and reject or require modification of any proposed or previously approved order of procedure, method, structure or equipment, which he considers to be unsafe for the work hereunder, or for other work being carried on in the vicinity, or for other structures, or for the public, or for workmen, engineers and inspectors employed thereon, or that in the opinion of the Commissioner will result in undesirable settlement of the ground, or that will not provide for the completion of the work within the period of time specified in the section "Time of Completion" of the Proposal, or that is contrary to any other requirement of this contract.

It is expressly agreed, however, that the acceptance or approval of any order of procedure, method, structure, or equipment submitted or employed by the Contractor shall not in any manner relieve the Contractor of responsibility for the safety, maintenance, and repairs of any structure or work, or for the construction, maintenance and safety of the work hereunder, or from any liability whatsoever on account of any procedure or method employed by the Contractor, or due to any failure or movement of any structure or equipment furnished by him. When constructed, even though in accordance with the approval of the Commissioner, should any structure or equipment installed hereunder afterwards prove insufficient in strength or fail in any manner whatsoever, such insufficiency or failure shall in no way form the basis of any claim for extra compensation for delay, or for damages or expenses caused by such insufficiency or failure, or for an extension of time for completion of this contract, or for material, labor or equipment required for repairing or rebuilding such structure or equipment or for re-

pairing or replacing any other work that may have been damaged by the movement or insufficiency or failure of any such structure or equipment, respectively.

* * * *

108.1. Protection of Existing Structures and Property

The Contractor shall avoid damage, as a result of his operations, to trees, plant life, existing sidewalks, curbs, streets, alleys, pavements, utilities, adjoining property, the work of other contractors, and the property of the City and others and he shall at his own expense repair any damage thereto caused by his operations.

* * * *

The Contractor shall familiarize himself with the requirements of local and state laws applicable to underpinning, shoring and other work affecting adjoining property, and wherever required by law the Contractor shall shoreup, brace, underpin, secure and protect as may be necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be in any way affected by the excavations or other operations connected with the work to be performed under this contract. The Contractor shall be responsible for the giving of any and all required notices to any adjacent or adjoining property owner or other party and such notice or notices shall be served in sufficient time as not to delay the progress of the work under this contract. The Contractor shall indemnify, save and keep the City harmless from any damages on account of settlements or the loss of laterlal [sic] support of adjacent or adjoining property and from all loss or expense and all damages for which the City may become liable in consequence of such injury or damage to adjacent and adjoining structures and their premises.

The provisions of the foregoing paragraph shall be construed to include also and apply to any liabilities and duties placed upon the City of Chicago as owner or oc-

cupant of the property on which the improvements provided for herein are to be constructed, by the provisions of an Act entitled "An Act to prescribe the duty of an owner or occupant of lands upon which excavations are made in reference to the furnishing of lateral and subjacent support to adjoining lands and structures thereon." See Chap. 70, Par. 10, Illinois Revised Statutes 1976.

The Contractor shall inform himself of the locations of all utilities in the vicinity of the site of the work and shall take suitable care to protect and prevent damage to such utilities from his operations under this contract. When performing work adjacent to existing sewers, drains, water and gas lines, electric or telephone or telegraph conduits or cables, poles lines or poles, or other utility equipment or structures, which are located outside of the neat lines of the excavations to be made or of the structures to be constructed under this contract and which are to remain in operation, the Contractor shall maintain such utility equipment and structures in place at his own expense and shall co-operate with the City department, utility company or other party owning or operating such utility equipment or structures in the maintenance thereof. The Contractor shall be responsible for and shall repair all damage to any such utility equipment or structures caused by his acts, whether negligent or otherwise, or his omission to act, whether negligent or otherwise, and shall leave such utility equipment or structure in as good condition as they were in prior to the commencement of his operations under this contract, however, it is hereby agreed that any such utility equipment or structures damaged as a result of any act, or omission to act, of the Contractor may, at the option of the City department, utility company or other party owning or operating such utility equipment or structures damaged, be repaired by such City department, utility company, or other party and in such event the cost of such repairs shall be borne by the Contractor.

* * * *

SPECIAL CONDITIONS FOR VARIOUS DRAWBRIDGES NEW PILE CLUSTERS D.P.W. PROJECT NO. E-0-469

201. STANDARD SPECIFICATIONS

The "Standard Specifications" designated as a component part of the Contract Documents on page R-3 of Requirements for Bidding and Instructions to Bidders means the Standard Specifications for Road and Bridge Construction Issued by the Department of Transportation of the State of Illinois, dated July 1, 1988, together with additions and revisions thereto issued by said Department of Transportation as supplemental specifications and special provisions, in effect on the date of advertisement for bids.

* * * *

204. REVISION TO STATE OF ILLINOIS STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION

Page 13, Section 103.02, Award of Contract.—Revised "45 calendar days" in the first and second paragraphs to read "60 calendar days".

205. TERMS

Wherever, in the Contract Documents, the following terms, or pronouns in place of them, or abbreviations, are used, the intent and meaning shall be interpreted as follows:

"Commissioner" means the Commissioner of the Department of Public Works, City of Chicago.

"A.S.T.M." means American Society for Testing and Materials.

"A.E.D." means Associated Equipment Distributors.

"A.A.S.H.T.O." means American Association of State Highway and Transportation Officials.

"C.C.D." means Chicago City Datum.

"City" means City of Chicago.

"Department" means City of Chicago or Department of Public Works.

"FS" means Federal Specification.

"IDOT" means Illinois Department of Transportation.

"SSPC" means Steel Structures Painting Council.

* * * *

209. PROVISIONS RELATING TO RIVER TRAFFIC

The Contractor's attention is directed to the fact that the Branches of the Chicago River involved are navigable streams. As such, the bridges involved herein must be open to masted vessels at any time on signal, except at certain hours of the day, as established by the City ordinance.

During the execution of this contract, marine regulations shall be complied with in every way, so that river traffic may be protected and any river obstruction avoided. In the event the Contractor finds it necessary to obstruct the river at any time, he should so advise the Commissioner, through the office of the Chief Bridge Engineer, who will make the necessary inquiries of the proper waterway officials so that the Contractor can schedule his work without interfering with the movement of vessels.

The Contractor shall comply with the directions of the Coast Guard and schedule his operations accordingly. No separate payment will be made for work or expenses incurred by compliance with this provision. Such cost will be deemed to be included in the contract prices.

* * * *

DETAIL SPECIFICATIONS

SCOPE OF WORK

The work under this contract involves the removal of various timber pile clusters and appurtenances plus their bindings and their replacement by 14 new 37-pile timber clusters at the following Drawbridges: Chicago Avenue over the North Branch of the Chicago River, Kinzie Street over the North Branch of the Chicago River, Cermak Road over the South Branch of the Chicago River, Washington Street over the South Branch of the Chicago River, and Madison Street over the South Branch of the Chicago River.

Attached sketch No. S-1 shows a typical arrangement of a 37 pile cluster. Attached sketches V-1 thru V-5 explains [sic] the existing pile clusters to be removed and the locations of the new clusters to be installed.

The contractor bidding this project shall have previous experience in pile-driving and related operations and may be required to submit evidence of the same in writing, at the option of the Commissioner.

The bidder is advised to visit and examine each site so that he will have a clear understanding of the requirements. No reimbursement will be made by the City of Chicago for any cost sustained in making such examinations.

For the purpose of this agreement, it will be necessary that the Contractor supply all labor and equipment to perform the work outlined in these specifications. Such equipment shall include barges, cranes, tugs and all hand and other tools as the work requires.

* * * *

CONSTRUCTION METHODS: After unwrapping, the existing piles shall be pulled one at a time with all necessary precautions taken to prevent breaking or splitting, with a crane employing a chain or heavy duty cable choker which has been slipped over the pile and lowered to a point well below the waterline. However, the use a clam bucket will be permitted with the approval of the Commissioner.

When new or existing pilings are being withdrawn, should breakage of any pile or pilings occur above the bottom of the river (mud line), the contractor shall remove any such broken pile or piling. In the event such pile or piles shall break at or below such mud line, the procedure to be followed and the determination of removal of the remaining portion of the pile or piles shall be at the direction of the Commissioner.

Upon completion of pulling, all piles together will [sic] all discarded appurtenances and debris, shall become the Contractor's responsibility and shall be removed from the site and properly disposed of. All dispositions shall be in conformity with the rules and regulations of the Illinois Environmental Protection Agency and of the United States Environmental Protection Agency.

The Contractor is advised that the passage of vessels has first priority and that no payment will be made for loss of time due to such passages. By inquiry from the City the contractor can determine in advance when these passages will occur, so that he may schedule his work accordingly.

The new pile clusters shall consist of thirty-seven (37) piles each. After each pile is driven into place, the new pile shall be tied off to the preceding pile by means of

a chain or cable tacked across each of the heads, in such a manner that conformity with the specified pattern as noted on Sketch S-1 can be observed.

The elevation of the new clusters shall be similar to other clusters at the particular location. All piles in any given cluster shall have the same approximate elevation and no pile in the given cluster shall differ in elevation from any other pile in the cluster by more than three (3) inches. If this requirement is not met, the Contractor will be required to trim the piles with a chain saw before the work will be accepted.

The Contractor shall not drive the piles at any other location than that specified by the City. The position of the piles shall not be changed to any degree, as even slight position changes may cause serious damage to various underground cables and structures. Should the contractor damage any of these cables or structures through carelessness or improper positioning he will be obliged to repair such damages and replace such materials at his own expense.

BASIS OF PAYMENT: This work will be paid for at the contract unit price each for Pile Cluster which price shall be payment in full for removal and disposal of material from existing clusters and for the new 37 pile clusters installed as specified herein.

* * * *

(Letterhead Of)

ILLINOIS DEPARTMENT OF TRANSPORTATION
Division of Highways/District 1
201 West Center Court/Schaumburg, Illinois/60196-1096

LOCAL ROADS AND STREERS [sic]
CITY
CHICAGO
Section: 90-E0469-00-BR
New Pile Clusters
Memorandum of Understanding Project (M.O.U. 20)

January 25, 1991

Mr. Louis Koncza
Chief Engineer
Bureau of Engineering
320 North Clark Street
Chicago IL 60610

Dear Sir:

The bids received for the January 15, 1991 letting have been evaluated and are considered acceptable for proceeding with an award of the above project. We hereby concur in the award of the contract to Great Lakes Dredge and Dock Company for the sum of $335,640.00.

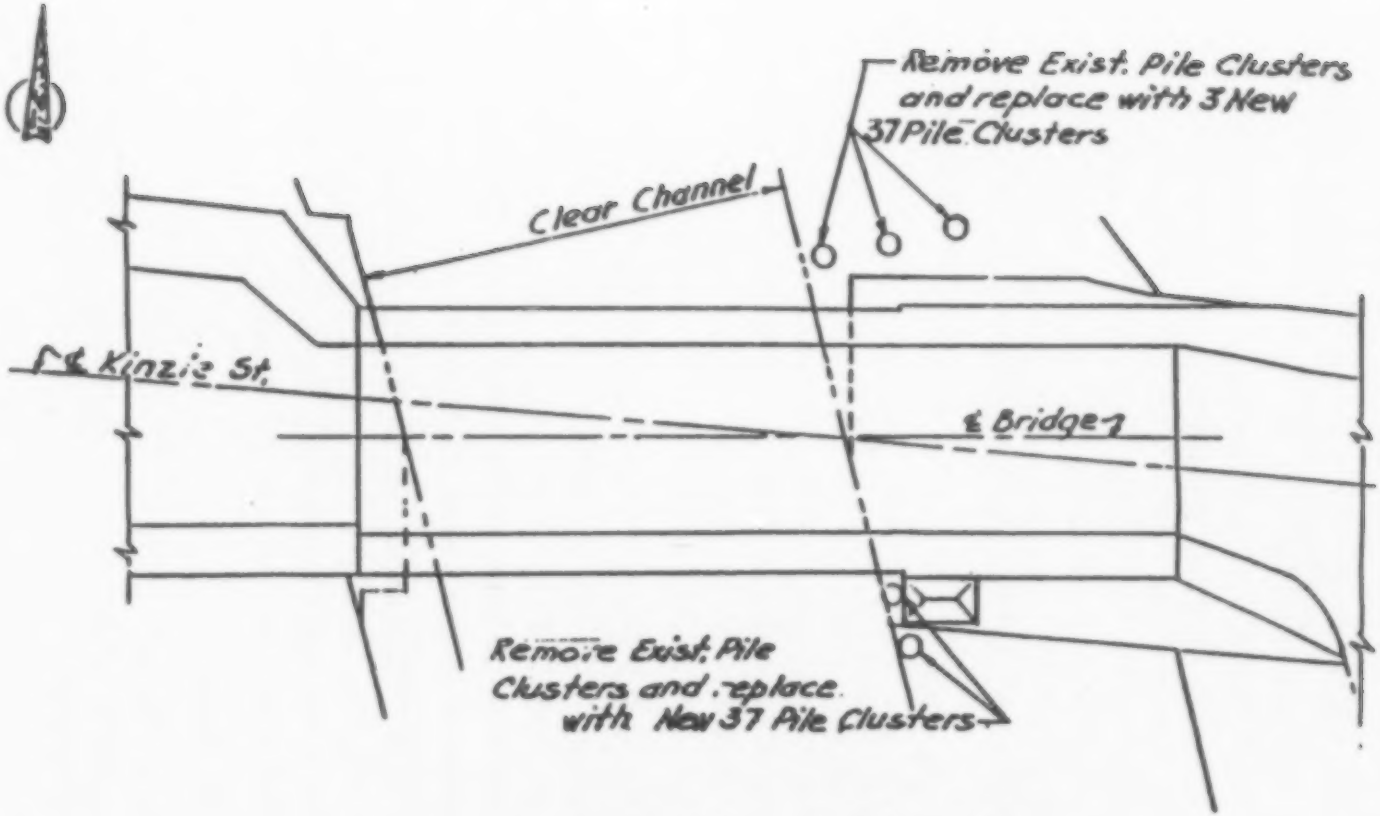
Since this is a Memorandum of Understanding funded project only four (4) copies of the complete Contract Documents, the Executed Contractor's Performance Bond and Inter-Office Memo of Award are needed.

Very truly yours,

/s/ JAMES C. SLIFER
James C. Slifer, P.E.
District Engineer

OYN/rk

cc: William T. Sunley w/encl.
Alexander Grzyb


Remove Exist. Pile Clusters and replace with 3 New 37 Pile Clusters
Clear Channel
℄ Kinzie St.
℄ Bridge
Remove Exist. Pile Clusters and replace with New 37 Pile Clusters

KINZIE ST. BRIDGE

5 - 37 Pile Clusters to be installed

SKETCH V-2

[Filed October 6, 1992]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Complaint of GREAT LAKES DREDGE & DOCK COMPANY for Exoneration from or Limitation of Liability	IN ADMIRALTY
GREAT LAKES DREDGE & DOCK COMPANY, Plaintiff, v.	No. 92 C 6754
	JUDGE KOCORAS
CITY OF CHICAGO, an Illinois municipal corporation, Defendant.	

COMPLAINT

Great Lakes Dredge & Dock Company ("Great Lakes"), by its attorneys McDermott, Will & Emery and Winston & Strawn, states its complaint for exoneration from or limitation of liability, and for other relief, as follows:

1. This is an admiralty and maritime claim within the meaning of Federal Rule of Civil Procedure 9(h) and Supplemental Admiralty Rules A and F for exoneration from or limitation of liability and for other relief. This Court has admiralty jurisdiction pursuant to 28 U.S.C. § 1333 and the Admiralty Extension Act, 46 U.S.C. § 740.

2. Great Lakes is a New Jersey corporation and owns the forty-two foot launch M/V PEACH STATE (U.S. Coast Guard Certificate of Documentation No. 286011), and two barges known as BARGE NO. G.L. 136 (U.S. Coast Guard No. 253150) and BARGE NO. G.L. 150 (U.S. Coast Guard No. 263631). Great Lakes used due diligence to make these vessels seaworthy, and each was tight, staunch and strong, fully and properly manned, equipped and supplied, and in all respects seaworthy and fit for the service in which each was engaged. At all times material hereto, these vessels were on navigable waters within this judicial district.

3. In July and August, 1991 the M/V PEACH STATE towed the aforesaid barges on several occasions to various sites along the North and South Branches of the Chicago River, a navigable inland waterway within this Court's admiralty jurisdiction, ultimately to a point alongside the Kinzie Street Bridge in Chicago. During the last week of August and first three weeks of September, 1991, the barge crew removed old, deteriorating pile clusters and drove new pilings into the riverbed.

4. The new pilings were located in clusters next to the navigable channel, served as an aid to navigation and protected the bridge and bridgehouse from allision by mispiloted or distressed vessels straying from the navigable channel. Pile clusters are common to rivers and harbors, their construction and upkeep being traditional maritime activities.

5. Once the crew had completed driving pilings at the Kinzie Street Bridge location, which proceeded without incident and in a workmanlike manner, the M/V PEACH STATE towed both barges on or about September 23, 1991 to their berths at Great Lakes' South Chicago Yard

on the Calumet River, within this judicial district, terminating their voyage.

6. Unbeknownst to Great Lakes or its crew, the City of Chicago, an Illinois municipal corporation, owned and operated a tunnel system beneath the riverbed and in close proximity to the old and new pile clusters on the south side of the Kinzie Street Bridge. The City of Chicago never disclosed the existence of the tunnel to Great Lakes' personnel, either when it was soliciting bids or issuing specifications for the work or when it approved changed locations for the clusters which were warranted by field conditions.

7. On the morning of April 13, 1992, over six months after Great Lakes' vessels left the site, an eddy formed on the river surface a few feet from the location on the south side of the bridge where two new pile clusters had been driven.

8. The present opinion of representatives of the City of Chicago is that the eddy was caused by the river leaking into the tunnel through a breach of the tunnel wall, a breach which, on information and belief, the City of Chicago first knew about no later than January or February, 1992, and which worsened and eventually flooded the tunnel system, allegedly causing damage to individuals and businesses in or near the Chicago Loop.

9. Great Lakes has been sued by numerous parties who claim damages as a result of Great Lakes' alleged negligence in driving the pilings. A list of actions filed to date against Great Lakes is attached hereto as Exhibit A. These claims have been consolidated within the Circuit Court of Cook County, Illinois in the case entitled *In re Chicago Flood Litigation*, No. 92 L 5422. In that lawsuit, more than a score of named plaintiffs seek damages against

Great Lakes and the City of Chicago in excess of one million dollars, which claims far exceed the value of the M/V PEACH STATE, the two barges and their freight pending. Named plaintiffs also purport to represent a class of unnamed individuals and businesses which were damaged by the flood, and there may exist other possible claimants who have yet to assert claims against Great Lakes.

COUNT I

(For Exoneration from or Limitation of Liability)

10. Great Lakes incorporates paragraphs 1 through 9, inclusive, as though fully set forth herein.

11. The tunnel flood and all consequent property loss and damages were caused not by fault of the M/V PEACH STATE, BARGE NO. G.L. 136 or BARGE NO. G.L. 150, the respective officers or crew, or of any person for whose actions Great Lakes is responsible but, on the contrary, were caused solely and only as a result of the negligence of the City of Chicago and/or the negligence of other parties presently unknown, and neither Great Lakes nor its vessels nor crew are liable to any extent.

12. All losses and damages resulting from the flood occurred without fault on the part of Great Lakes and without privity or knowledge on Great Lakes' part.

13. Great Lakes is entitled to exoneration from liability for all losses and damages occasioned and incurred by reason of the flood.

14. Alternatively, and without admitting liability, in the event that Great Lakes or the M/V PEACH STATE or BARGE NO. G.L. 136 or BARGE NO. G.L. 150 should be held responsible to any party, Great Lakes is entitled to

the benefit of the limitation of liability provided in title 46, section 183 *et seq.*, of the United States Code and all laws supplementary thereto and amendatory thereof.

15. At the termination of the aforesaid voyage, the value of the M/V PEACH STATE did not exceed the sum of $35,000 dollars; the value of BARGE NO. G.L. 136 did not exceed the sum of $223,300 dollars; and the value of BARGE NO. G.L. 150 did not exceed the sum of $40,000 dollars.

16. Great Lakes was to be paid the total of $335,640 by the City of Chicago for work on pile clusters at five bridge sites along the Chicago River, including the Kinzie Street Bridge location, but to date Great Lakes has been paid only $281,712.45.

17. Great Lakes has sought leave to file an *ad interim* stipulation in the appropriate form, with an approved corporate surety, for the payment into Court of the amount of Great Lakes' interest in the M/V PEACH STATE, BARGE NO. G.L. 136 and BARGE NO. G.L. 150 and their pending freight, together with interest at the rate of six percent per annum from the date of said stipulation, and $250 for costs. In addition, Great Lakes is prepared to stipulate for any amount in excess of this *ad interim* stipulation as determined by this Court to be necessary to reflect the value of its vessels and pending freight.

WHEREFORE, Great Lakes Dredge & Dock Company requests:

(1) that upon the filing of the stipulation herein described, this Court shall issue a notice to all persons, firms or corporations asserting claims for any and all losses, damages, injuries or destruction with respect to which Great Lakes seeks exoneration from or limitation of liability admonishing them to file their respective claims with

the Clerk of the Court and to serve on the attorneys for Great Lakes a copy thereof on or before the date specified in the notice;

(2) that upon the filing of the stipulation herein described, the Court shall issue an injunction restraining the commencement or prosecuion of any action or proceeding of any kind against Great Lakes, its crew or underwriters, or any of its property with respect to any claim for which Great Lakes seeks exoneration from or limitation of liability, including any claim arising out of or connected with any loss, damage, injuries or destruction resulting from the flood, including but not limited to the claims asserted against Great Lakes in the litigation set forth in Exhibit A hereto;

(3) that if any claimant who shall timely have filed a claim shall also file an exception controverting the value of the M/V PEACH STATE, BARGE NO. G.L. 136 and BARGE NO. G.L. 150 or their pending freight, this Court shall cause due appraisement to be had of the value of the said vessels and freight at the termination of their voyage and in which event this Court shall enter an order for the filing of an amended stipulation for the aggregate value, as so determined, of Great Lakes' interest in the said vessels and their pending freight;

(4) that this Court adjudge that Great Lakes and the M/V PEACH STATE, BARGE NO. G.L. 136 and BARGE NO. G.L. 150 are not liable to any extent whatsoever for any losses, damages, injuries or destruction or for any claim whatsoever occasioned or incurred as the result of the matters and happenings referred to in this complaint or, in the alternative, if the Court should adjudge that Great Lakes is liable in any amount whatsoever, that said liability may be limited to the value of Great Lakes' interest in the M/V PEACH STATE, BARGE NO. G.L. 136

and BARGE NO. G.L. 150 and their pending freight, and may be divided *pro rata* among such claimants; and that a judgment be entered discharging Great Lakes and the said vessels of and from any and all further liability and forever enjoining and prohibiting the filing or prosecution of any claims against Great Lakes or its property in consequence of or connected with the matters and happenings referred to in this complaint; and

(5) that Great Lakes have such other and further relief as justice may require.

Great Lakes states its claims against the City of Chicago as follows:

COUNT II
(For Indemnity from the City of Chicago)

18. Great Lakes incorporates paragraphs 1 through 17, inclusive, as though fully set forth herein.

19. The City of Chicago owed a duty to the bidding contractors, including Great Lakes, to disclose the existence of the tunnel near the Kinzie Street Bridge before it solicited bids from the various marine firms which submitted bids.

20. The City of Chicago failed to disclose the existence of the tunnel near the Kinzie Street Bridge to Great Lakes before it solicited bids.

21. If Great Lakes had known about the existence of the tunnel near the Kinzie Street Bridge, it would not have submitted the bid it did submit and would not have undertaken the pile driving work on the terms specified for the project by the City of Chicago.

22. The City of Chicago had a duty to disclose the existence of the tunnel to Great Lakes before any work actually was commenced at the Kinzie Street Bridge location and before the City of Chicago approved changed

locations warranted by field conditions for two of the pile clusters.

23. The City of Chicago failed to disclose the existence of the tunnel near the Kinzie Street Bridge to Great Lakes before the actual work was commenced or before it approved changed locations for two of the pile clusters.

24. The City of Chicago also owed a duty to maintain and repair the tunnel. The City of Chicago failed to maintain the tunnel and, although it learned of the breach in the tunnel wall no later than January or February, 1992, it failed to repair the tunnel.

25. If the pilings driven by Great Lakes are held to have played any role in the breach of the tunnel, then the City of Chicago's failure to disclose the existence of the tunnel near the Kinzie Street Bridge and failure to maintain and repair the tunnel were the sole proximate causes of the breach and any damages ensuing therefrom.

26. Based on the parties' relationship, the complete fault of the City of Chicago, including its failures to disclose the existence of the tunnel and maintain or repair it after it learned of the breach, and the lack of any fault on the part of Great Lakes, Great Lakes is entitled to be indemnified by the City of Chicago for any damages for which Great Lakes is held responsible, including its costs and attorneys' fees incurred in defending the various claims and prosecuting its claim for exoneration from liability.

27. Pursuant to Federal Rule of Civil Procedure 14(a), Great Lakes requests that judgment be entered in its favor and against the City of Chicago for the entire amount Great Lakes is found liable to pay any injured claimant herein.

28. Pursuant to Federal Rule of Civil Procedure 14(c), Great Lakes alternatively requests that any judgment in favor of any claimant be entered directly in favor of the injured claimant(s) and against the City of Chicago.

WHEREFORE, Great Lakes Dredge & Dock Company requests:

(1) that judgment be entered in its favor and against the City of Chicago for any amount Great Lakes is found liable to pay any injured claimant herein or, alternatively, that any judgment in favor of any claimant be entered directly in favor of the injured claimant(s) and against the City of Chicago;

(2) that Great Lakes be awarded its costs and attorneys' fees incurred in defending the claims filed herein, in the state court proceedings, and in prosecuting its claim for exoneration from liability; and

(3) that this Court award whatever other relief that justice may require.

COUNT III
(For Contribution from the City of Chicago)

29. Great Lakes incorporates paragraphs 1 through 28, inclusive, as though fully set forth herein.

30. If it is found that claimants sustained any loss or injury as may be proven by their claims herein, then such loss or injury was caused in whole or in part by the negligence of the City of Chicago in failing to disclose the existence of the tunnel, or in failing properly to maintain or repair the tunnel after it learned of the breach, or by some other failing of the City of Chicago not presently known to Great Lakes, and not by any fault, neglect or want of care on the part of Great Lakes.

31. If the Court finds fault attributable to Great Lakes and the City of Chicago, then Great Lakes requests that the Court determine the proportion of each party's relative fault to the totality of causation and award Great Lakes such proportionate contribution from the City of Chicago as the City of Chicago's *pro rata* share of such causation shall bear to the whole.

32. Pursuant to Federal Rule of Civil Procedure 14(a), Great Lakes requests that judgment be entered in its favor and against the City of Chicago for any amount Great Lakes is found liable to pay any injured claimant herein attributable to the negligence of the City of Chicago.

33. Pursuant to Federal Rule of Civil Procedure 14(c), Great Lakes alternatively requests that any judgment in favor of any claimant be entered directly in favor of the injured claimant(s) and against the City of Chicago for any damages attributable to the negligence of the City of Chicago.

WHEREFORE, Great Lakes Dredge & Dock Company requests:

(1) that judgment be entered in its favor and against the City of Chicago for any amount Great Lakes is found liable to pay any injured claimant herein attributable to the negligence of the City of Chicago or, alternatively, that any judgment in favor of any claimant be entered directly in favor of the injured claimant(s) and against the City of Chicago for any damages attributable to the negligence of the City of Chicago; and

(2) that this Court award to Great Lakes costs and whatever other relief justice may require.

GREAT LAKES DREDGE
& DOCK COMPANY

By: /s/ PAUL J. KOZACKY
One of its attorneys

Douglas Reimer
John T. Schriver
Paul J. Kozacky
McDERMOTT, WILL & EMERY
227 West Monroe Street
Chicago, Illinois 60606-5096
312/372-2000

Of counsel:

Duane M. Kelley
WINSTON & STRAWN
35 West Wacker Drive
Chicago, Illinois 60601
312/558-5600

VERIFICATION

The undersigned certifies under penalty of perjury that he is authorized to sign this verification on behalf of Great Lakes Dredge & Dock Company, is personally knowledgeable about the matters set forth herein, and that the factual statements set forth in this complaint are true and correct, except as to such matters stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ DOUGLAS B. MACKIE
Douglas B. Mackie

EXHIBIT A

1. *G. P. Antons, Restaurant & Lounge, Merit Insurance Co., on behalf of themselves and all other persons and entities similarly situated, plaintiffs v. Great Lakes Dredge & Dock Co., City of Chicago, Metropolitan Water Reclamation District of Greater Chicago, Itel Corporation, Blackstone Dredging Partners L.P. and John Does, defendants,* No. 92 CH 03708 (Cook County, Illinois filed April 14, 1992).

2. *Dr. Richard Cook, plaintiff v. City of Chicago, Great Lakes Dredge & Dock Company, defendants,* No. 92 CH 3812 (Cook County, Illinois filed April 16, 1992).

3. *Tiffany Wilson, LePecque and Jac-Lin, plaintiffs v. Great Lakes Dredge & Dock Company, City of Chicago, Metropolitan Water Reclamation District and John Does, defendants,* No. 92 Ch 3821 (Cook County, Illinois filed April 16, 1992).

4. *Merced E. Zuniga, plaintiff v. City of Chicago and Great Lakes Dredge & Dock Co., defendants,* No. 92 Ch 3882 (Cook County, Illinois filed April 22, 1992).

5. *Julie Mome, Inc., plaintiff v. Great Lakes Dredge & Dock Co., Great Lakes International, Inc., Itel Corporation, Blackstone Dredging Partners L.P., City of Chicago and John Does, defendants,* Nos. 92 L 05422 & 92 Ch 4359 (Cook County, Illinois filed May 4, 1992).

6. *Robert Allen, Inc., M. J. Miller & Co., Inc., Edwin J. Mills and Capitol Snax, Inc., plaintiffs v. City of Chicago, Great Lakes Dredge & Dock Co., Dennis Sadowski, James McTigue, Louis Koncza, John LaPlante and Frank Ociepka, defendants,* No. 92 Ch 4337 (Cook County, Illinois filed May 1, 1992).

7. *Norman Berliant, plaintiff v. City of Chicago, Great Lakes Dredge & Dock Co. and Commonwealth Edison, defendants,* No. 92 Ch 4702 (Cook County, Illinois filed May, 1992).

8. *In re Chicago Flood Litigation (Hugh C. Michels & Co., Kanter & Mattenson, Ltd., Merit Insurance Co., Aera Crockett, M.J. Miller & Co., Inc., Edwin J. Mills, Capitol Snax, Inc., Dr. Richard Cook, Tiffany Wilson, Le Pecque Women's Apparel, Jac-Lin, Merced E. Zuniga, Dr. Donald L. Hohman, AVOCA, Inc., Julie Mome, Inc., Marilyn Hollander, Norman C. Berliant d/b/a Berliant Pharmacy, Fish Port, Inc., Fisherman's Paradise, Inc. d/b/a Solomon's Fishery, Hedlund Corporation, Hoe Kow Chinese Restaurant, Ltd., Oriental Electronics, Inc., R & L Fashions, Inc. d/b/a The Jewel Box, Randolph Flower Shop, Inc., Soul by the Pound, Inc., Royal Redemption Center, Inc. d/b/a State Pawners & Jewelers, Young Sik Jong d/b/a Harry's Sandwich Shop, Bart's Bar & Grill, Ronald P. Evans, G.P. Antons, Restaurant & Lounge, Robert Allen, Inc., plaintiffs v. Great Lakes Dredge & Dock Company, City of Chicago, Great Lakes Dredge & Dock Corporation, Great Lakes International, Inc., Itel Corporation, Blackstone Dredging Partners, defendants),* No. 92 L 5422 (Cook County, Illinois filed June 1, 1992).

9. *Bart's Bar & Grill, Inc., on behalf of themselves and all other persons and entities similarly situated, plaintiffs v. Great Lakes Dredge & Dock Company, City of Chicago, Mary Roes and John Does, defendants,* No. 92 Ch 5506 (Cook County, Illinois filed June 9, 1992).

10. *The Options Clearing Corporation, plaintiff v. The City of Chicago, a Municipal Corp. and Great Lakes Dredge & Dock Company, defendants,* No. 92 M1 020188 (Cook County, Illinois filed August 14, 1992).

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Complaint of GREAT LAKES DREDGE & DOCK COMPANY for Exoneration from or Limitation of Liability	
GREAT LAKES DREDGE & DOCK COMPANY, Plaintiff,	IN ADMIRALTY
v.	No. 92 C 6754
CITY OF CHICAGO, an Illinois municipal corporation, Defendant.	Hon. Charles P. Kocoras

AFFIDAVIT OF ROBERT W. BLOOM, JR.

Robert W. Bloom, Jr. certifies under penalty of perjury that the following statements are based on his personal knowledge and are true and correct:

1. I am Chief of the Bridge Branch, United States Coast Guard, Ninth District, based in Cleveland, Ohio and Bridge Program Manager. My responsibilities include authorizing repair and construction projects in navigable waterways in the Ninth District, which includes Illinois and the Great Lakes.

2. The Coast Guard's files contain several letters concerning a pile driving project in the North and South Branches of the Chicago River in 1990. In August, 1990 the City of Chicago submitted a request for approval of dolphin removal and replacement at five bridge sites in the Chicago River. The original plans called for steel pilings, and on September 7, 1990 I sent City Engineer Koncza a letter indicating that the City would need to undergo the permit application and review procedures in order to change the pilings from timber to steel. Sometime thereafter, the City revised its specifications and chose timber replacements.

3. Timber piles are kinder to vessels than steel piles. They are less likely to penetrate a vessel's hull than steel piles. Hull penetration can cause a vessel to sink. In addition, the timber dolphins also protect both the vessel and the bridge from each other. A vessel is less likely to suffer damage from a timber dolphin than from a concrete bridge abutment or its steel structure. The NOAA charts indicate a bascule bridge at Kinzie Street in Chicago, which means the bridge has to be raised and lowered to permit masted traffic to pass. Timber dolphins, which protect bascule bridges, also protect masted navigation.

4. The Cuyahoga River takes a sharp bend at its mouth on Lake Erie. The point around the bend is protected by a fendering system secured by pilings driven into the river bottom. Vessels, including barges, commonly use the structure to lay alongside and pivot about in order to make the turn. Vessels also use these particular structures to mark the navigable channel, the portion of a navigable waterway over a certain charted depth.

Further affiant sayeth not.

/s/ ROBERT W. BLOOM, JR.
Robert W. Bloom, Jr.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Complaint of GREAT LAKES DREDGE & DOCK COMPANY for Exoneration from or Limitation of Liability	)	
GREAT LAKES DREDGE & DOCK COMPANY, Plaintiff,	)	IN ADMIRALTY
v.	)	No. 92 C 6754
CITY OF CHICAGO, an Illinois municipal corporation, Defendant.	)	Hon. Charles P. Kocoras

AFFIDAVIT OF LES J. FLETCHER

Les J. Fletcher certifies under penalty of perjury that the following statements are based on his own personal knowledge and are true and correct:

1. I was employed by Great Lakes Dredge & Dock Company ("Great Lakes") from April, 1953 to May, 1992. I began with Great Lakes as an apprentice to divers. In 1955 I was promoted to diver. In addition to working as a diver, I also worked in the Great Lakes yards and on work crews. In 1982 I became a full time foreman of pile driving crews.

2. I was the pile driving foreman for Great Lakes' pile driving project in July through September, 1991, which consisted of replacing 14 pile clusters at five different locations in the Chicago River, including a location near Kinzie Street.

3. The pile cluster replacement project started in the Chicago River at Cermak Road in July, 1991. The piles to be driven were transported from Great Lakes' yard near 92nd Street on the Calumet River to the work site by a towed barge. The piles pulled from the river were laid upon the same pile barge, to be taken away from the work site back to Great Lakes' yard for disposal.

4. While at the Cermak Road location, the tug PEACH STATE was needed to assist moving the pile driving and deck barges so that pleasure craft and commercial traffic could navigate the river. The PEACH STATE was also used every work day to bring the barges to the work site from their secured overnight locations. Following the removal of the old piles, two new pile clusters of 37 piles in each cluster were driven at the Cermak Road location.

5. Upon completion of the work at Cermak Road, the PEACH STATE towed the barges to the next project location at Washington Street. I and some other Great Lakes crew members were transported from the Cermak Road location to the Washington Street location on one of the barges.

6. At Washington Street, the PEACH STATE would move the barges from their secured overnight moorings to the work site each morning, and return the barges to their secured positions each night. One pile cluster was removed and one new 37 pile cluster was driven near Washington Street.

7. At the completion of the work at Washington Street, the barges were shifted with the help of the PEACH STATE to the Madison Street location, where there was a commuter boat dock. Work at the Madison Street location was delayed in the mornings due to the commuter boat's need to use the nearby dock for loading and unloading its passengers. Our work at Madison Street consisted of removing one existing pile cluster and driving one new 37 pile cluster. At the end of each work day at Madison Street, the PEACH STATE would tow the barges to their overnight moorings, and each morning the PEACH STATE would begin the day by bringing the barges to the work site.

8. Once the work at Madison Street was completed, the PEACH STATE towed the barges to Chicago Avenue, the next work site. When the barges were moved to Chicago Avenue, I and some other members of the crew were transported on one of the barges. At the Chicago Avenue location, 5 new 37 pile clusters were driven after the existing piles were removed. The work at Chicago Avenue required the PEACH STATE to move the barges to four different positions in order to drive the 5 pile clusters.

9. Once the five pile clusters were installed at Chicago Avenue, the barges were towed by the PEACH STATE to Kinzie Street. At the beginning and end of every day at the Kinzie Street location, the PEACH STATE would tow into position the Barge G.L. No. 150, which carried the new piles to be driven and on which the old piles were placed.

10. A total of five new 37 pile clusters were driven at Kinzie Street at two separate locations after all of the old pile clusters were pulled. At Kinzie Street, as at each of the other sites, the barge on which the piles were placed

was tied to the side of the barge on which the pile driving equipment was placed. This configuration resulted in one or both of the barges working in the navigable channel. While working at the Kinzie Street locations, the work was interrupted on several occasions in order to allow commercial traffic to pass. The pile barge would have to be moved out of the channel to allow commercial traffic sufficient room to navigate the river.

11. At the completion of the work at Kinzie Street, the two barges were towed back to Great Lakes' yards on the Calumet River. There the old piles on the barge G.L. 150 were removed for disposal.

FURTHER AFFIANT SAYETH NOT.

/s/ LESLIE J. FLETCHER
Les J. Fletcher

SUBSCRIBED AND SWORN TO
before me this 7th day
of December 1992.

/s/ DOLORES FISHER
Notary Public

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Complaint of GREAT LAKES DREDGE & DOCK COMPANY for Exoneration from or Limitation of Liability	)	
GREAT LAKES DREDGE & DOCK COMPANY,	)	IN ADMIRALTY
Plaintiff,	)	No. 92 C 6754
v.	)	Hon. Charles P. Kocoras
CITY OF CHICAGO, an Illinois municipal corporation,	)	
Defendant.	)	

AFFIDAVIT OF GEORGE E. LEITHNER

George E. Leithner certifies under penalty of perjury that the following statements are based on his personal knowledge and are true and correct:

1. I have been a marine surveyor since 1948 and am president of the marine surveying firm Hunt, Leithner & Company, Inc. I graduated from the United States Merchant Marine Academy in Kings Point, Long Island, New York in 1944, sailed as a Third and Second Officer aboard various vessels, and further trained as a United States Naval Reserve Officer in Bayonne, New Jersey.

2. Attached hereto as Exhibit A is an enlargement from the National Ocean Service's chart for the Chicago River (19th ed. Jan. 12, 1991) which shows the bend in and the constriction of the river at Kinzie Street (which is circled on the chart). Companies such as Material Service Corporation, Cometco, and Morton Salt regularly employ barges for shipping cargo up and down the river past Kinzie Street. Several marine companies tow the barges, including Material Service Corporation, Spivey Marine Services, Ham Tug & Fleeting Service Co., Inc. and Illinois Marine Towing, Inc. The turn and narrowing at Kinzie Street make for some tricky navigation, especially when the barges are light or empty and ride higher in the water and, as a result, the tows are more susceptible to being affected by the wind.

3. Given the turn and reduced horizonal clearance at Kinzie Street (which is among the narrowest passages on the Chicago River), the concrete bridge abutments which support the bascule bridge and extend down into the water are a severe hazard to navigation. Allision with the concrete abutment, or any of the bridge's steel underwork and structure, could seriously damage a vessel, even causing a hull breach and possible sinking. To protect vessels from this serious risk, bridge owners customarily employ marine contractors to drive pile clusters sometimes referred to as "dolphins" around the abutments so a vessel will sheer off of the dolphin instead of hitting the bridge structure. Dolphins which serve this purpose are made of wood piles driven into the river bottom in a close, circular cluster wrapped by a chain and extending well above the river surface. These wooden pile clusters will give and absorb some of the force away from an allision, as opposed to steel dolphins which are as unkind to vessels as the steel and concrete bridge itself and are de-

signed only to protect the shore structure. The Kinzie Street dolphins are made of wood.

4. Barge tows, especially when light and subjected to wind, may make the turn at Kinzie Street by using the pilings as a fulcrum to turn. A tow boat pilot towing barges may deliberately land his tow against the pilings, and then maneuver the tow in such a manner as to pivot around the dolphin to align the tow with the channel. This maneuver sometimes is referred to as warping. Often, a pilot as a result of wind or current will have no alternative but to utilize the dolphin in this fashion.

5. On December 3, 1992 I boarded the tow boat M/V LORNA HACKWORTH which was making runs up and down the Chicago River. At approximately 0340 hours December 4, the tow boat faced up to a tow consisting of two empty barges in tandem and proceeded south towards Wolf Point. As we passed Chicago Avenue, the tow inadvertently landed on a dolphin near Ohio Street and the captain pivoted the tow on the dolphin to correct his course. As we approached the Grand Avenue bridge, the retractable pilothouse was lowered in order to clear that bridge. (Tow boats navigating the Chicago River have retractable pilothouses in order to clear certain bridges.) Once the pilothouse was retracted, we could no longer see over the tow (obscuring the channel alignment beneath the next bridge at Kinzie Street). The Kinzie Street bridge is lower than the one at Grand Avenue, but it opened quickly enough so the tow was not required to stop. Had full stop been ordered to avoid alliding into a too-slow-to-open bridge, the tow would have gotten out of alignment and doubtlessly would have hit the Kinzie Street pilings on one or possibly both sides of the river.

6. I have had over three decades' experience conducting marine casualty investigations on behalf of both bridge interests and river towing operators, and in that connection have conducted numerous surveys of damage to vessels, bridges and dolphins. I have been involved with preparing specifications for dolphin repair and often have seen marine firms such as Great Lakes Dredge & Dock Company, Lakes & Rivers Contractors, Inc. or Thatcher Engineering, among others, repairing or driving new pilings by utilizing crane and spud barges in the navigable channel. Generally, dolphin repair and replacement of necessity requires the use of crane barges, spud barges and tow boats because land-based equipment normally cannot reach the spot in the river where the dolphins are to be driven. Dolphin repair and replacement is a traditional maritime activity undertaken by marine contracting firms. If the dolphins are not maintained, they themselves become a hazard to navigation. They need to be staunch and resilient in order to serve their intended purpose.

FURTHER AFFIANT SAYETH NOT.

/s/ G.E. LEITHNER
George E. Leithner

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Complaint of GREAT LAKES DREDGE & DOCK COMPANY for Exoneration from or Limitation of Liability	)	
GREAT LAKES DREDGE & DOCK COMPANY,	)	IN ADMIRALTY
Plaintiff,	)	No. 92 C 6754
v.	)	Hon. Charles P. Kocoras
CITY OF CHICAGO, an Illinois municipal corporation,	)	
Defendant.	)	

AFFIDAVIT OF EDWARD POPELAS

Edward Popelas certifies under penalty of perjury that the following statements are based on his personal knowledge and are true and correct:

1. I have been registered with the U.S. Coast Guard as a captain since August, 1987. Most of my experience has been on the Calumet River, although I also have experience in piloting vessels on the Chicago River.

2. In September, 1991 I was hired on a day-to-day basis by Great Lakes Dredge & Dock Company ("Great Lakes") to captain and pilot the M/V PEACH STATE, a launch owned by Great Lakes.

3. On September 11, 1991 I piloted the M/V PEACH STATE from its moorings at the Ogden Slip on the Chicago River to a work site of Great Lakes near Kinzie Street in the North Branch of the Chicago River. A member of Great Lakes' crew unlashed Barge No. G.L. 150 (the barge which stowed and transported both new and old piles) from its moorings and I towed it with the PEACH STATE to a position alongside Barge No. G.L. 136 (the pile driving barge).

4. Barge No. G.L. 150 was lashed to the port side of Barge No. G.L. 136. I then piloted the PEACH STATE to a position astern of Barge No. G.L. 150, to which the PEACH STATE was tethered.

5. Beginning approximately 1245 hours, I unmoored the PEACH STATE and began towing both Barge Nos. G.L. 136 and G.L. 150, one at a time, from the north side of a Kinzie Street bridge to the south side. At the completion of this operation, I again lashed the PEACH STATE to Barge No. G.L. 150.

6. At approximately 1500 hours on September 11, 1991 I unmoored the PEACH STATE and towed Barge No. G.L. 150 from the Kinzie Street work site to its nightly storage mooring south of the railroad bridge several hundred yards south of the Kinzie Street bridge.

7. Once Barge No. G.L. 150 was securely moored, I piloted the PEACH STATE to the Ogden Slip where it was moored for the night.

8. The operation described above represents a typical day during the course of my employment by Great Lakes in September, 1991. Each day I would pilot the PEACH STATE from the Ogden Slip and tow Barge No. G.L. 150 from its moorings to the work site. Thereafter I would

standby, waiting to assist should either Barge need to be relocated to another work location or move to permit passage of other commercial river traffic. On several occasions, such assistance was required to move Barge No. G.L. 150 out of the channel to permit commercial traffic to pass.

9. Barges are "towed" by being pushed from astern. When empty of cargo, the barges are susceptible to being moved laterally by the wind. As a tug captain since 1987, I have personally observed occasions when a two-barge flotilla or oversized barge would deliberately lay up against the timber pile clusters or "dolphins" near bridges, either because the vessels had been pushed off course by wind or to assist the captain in turning the barges. The tug captain will turn one screw of his boat to reverse and the other to forward. The dolphins act as a fulcrum and this maneuver swings the barges in the direction necessary to navigate the river.

10. The dolphins are also used by pilots as points of reference similar to buoys to assist in determining the width of the channel and the best and most efficient course to steer.

Further affiant sayeth not.

/s/ EDWARD J. POPELAS
Edward Popelas

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Complaint of GREAT LAKES DREDGE & DOCK COMPANY for Exoneration from or Limitation of Liability	
GREAT LAKES DREDGE & DOCK COMPANY, Plaintiff, v. CITY OF CHICAGO, an Illinois municipal corporation, Defendant.	IN ADMIRALTY No. 92 C 6754 Hon. Charles P. Kocoras

AFFIDAVIT OF BILL J. SPIVEY

Bill J. Spivey certifies under penalty of perjury that the following statements are based on his personal knowledge and are true and correct.

1. I own and operate Spivey Marine Services, located in Channahon, Illinois, which operates a tug boat service in and about the Chicago area, including the Chicago and Calumet Rivers. I have run Spivey Marine for over 15 years. I employ many captains to pilot tugs which tow and transport commercial traffic in and around Chicago's navigable waterways. I have been a licensed captain and have

personally piloted tug towing barges up the Calumet and Chicago Rivers.

2. When towing large barges or flotillas of more than one barge tethered together, the tug boat pushes the barges from astern. When towing barges empty of cargo in high winds, the barges may act as a sail and move laterally despite the best efforts of the pilot. Based upon my years of experience in the marine towing business, it is normal practice for tug pilots in such circumstances to use the timber pile clusters or dolphins placed near bridges as aids to realign the barges and point the barges in their intended direction. Without using the dolphins in this manner, barges could uncontrollably allide into bridges or other structures.

3. In other instances, turns or bends in the river may require a pilot to lay his barges alongside dolphins at one bridge to point them in the proper direction so as to enable the barges to safely navigate the next stretch of the river. This is also a normal and common practice. The pilings act as a fulcrum against which the captain swings the barges into the necessary position to further pilot the barges.

4. It is also common practice for pilots to use the dolphins to define the river's navigable channel and act as buoys or markers. Especially where the channel narrows and turns, as with Kinzie Street on the North Branch of the Chicago River, the dolphins are visual aids which enable the pilot to plot the safest and most efficient course. Furthermore, like the other pile clusters in District I of the Chicago Harbor, the Kinzie Street dolphins are made of timber and are designed to protect the vessel from the bridge and as well as the bridge from the vessel. If the

pilings did not exist, a vessel could allide into the concrete and steel bridge, which would cause extensive damage to the vessel and possibly close the bridge to masted traffic. Timber pilings, on the other hand, bend and take some of the force away from the allusion. Timber dolphins are much kinder to vessels.

FURTHER AFFIANT SAYETH NOT.

/s/ BILL SPIVEY
Bill Spivey

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Complaint of GREAT LAKES DREDGE & DOCK COMPANY for Exoneration from or Limitation of Liability	)	
GREAT LAKES DREDGE & DOCK COMPANY,	)	IN ADMIRALTY
Plaintiff,	)	No. 92 C 6754
v.	)	Hon. Charles P. Kocoras
CITY OF CHICAGO, an Illinois municipal corporation,	)	
Defendant.	)	

AFFIDAVIT OF LARRY TIERI

Larry Tieri, certifies under penalty of perjury that the following statements are based on his personal knowledge and are true and correct:

1. I am a Construction Administrator, employed by Great Lakes Dredge & Dock Company ("Great Lakes"). I have been employed by Great Lakes between April, 1956 - May, 1959 and from August, 1967 to present.

2. On September 16, 1991 I took photographs of the pile driving work being performed by Great Lakes on the North Branch of the Chicago River near the Kinzie Street bridge, in Chicago, Illinois.

3. I arrived at the Kinzie Street bridge on the morning of September 16, 1991. The photographs appended to this affidavit were all taken by me on September 16, 1991. These photographs truly and accurately depict the subjects shown in the photographs.

4. The photograph labeled Exhibit 1 was taken from the Kinzie Street bridge looking south. It depicts Barge No. G.L. 136 on the left side of the photograph and Barge No. G.L. 150 on the right side of the photograph. Aboard the Barge No. G.L. 150 can be seen both the new pilings to be driven into the riverbed and the old pilings which had been pulled up from the river and were to be hauled down river to their disposal site. The view of both vessels is from their bows to their sterns. The top of the PEACH STATE's bridge can be seen behind Barge No. G.L. 150.

5. Exhibit 2 is a photograph taken from the Kinzie Street bridge looking south. Exhibit 2 also shows Barge No. G.L. 136 to the left and Barge No. G.L. 150 to the right, with the PEACH STATE behind Barge No. G.L. 150. Both Exhibits 1 (center) and 2 (lower right) show a new pile in the process of being attached to the leads of the pile driving rig.

6. Exhibit 3 is a photograph taken from the Kinzie Street bridge looking South. Exhibit 3 shows the bow of Barge No. G.L. 150 in the right foreground, Barge No. G.L. 136 on the left and the PEACH STATE once again behind Barge No. G.L. 150. In this photograph, a new pile is being lifted off of the Barge No. G.L. 150.

7. Exhibit 4 is a photograph taken from the Kinzie Street bridge looking southeast at the work site. It shows part of Barge No. G.L. 150 with old and new piles in the foreground, and part of Barge No. G.L. 136 alongside. The pile driving crane sits atop Barge No. G.L. 136 and the

photograph shows a new pile in the process of being driven into the riverbed.

8. Exhibit 5 is a photograph taken from the Kinzie Street bridge looking southeast. This photograph shows the bow and starboard sides of Barge No. G.L. 150, with Barge No. G.L. 136 alongside. The bridge house can be seen in its entirety on the left side of the photograph. Exhibit 5 shows the driving of a new pile into the riverbed. Exhibit 5 also shows that Barge No. G.L. 150 was in the navigable channel when the photograph was taken.

Further affiant sayeth not.

/s/ LARRY TIERI
Larry Tieri

SUBSCRIBED AND SWORN TO
before me this 2nd day
of December 1992.

/s/ MARGARET H. ZINNA
Notary Public

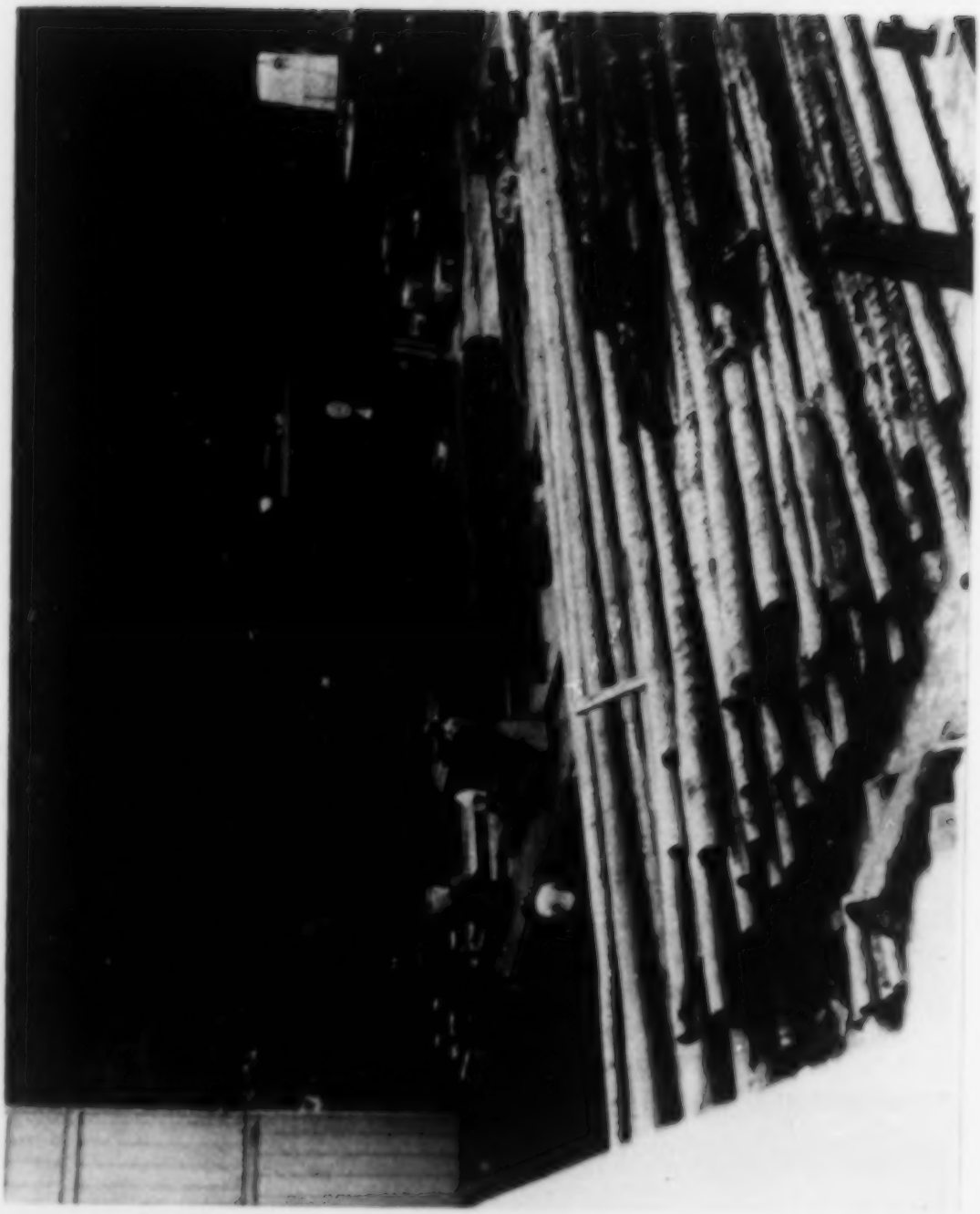


Exhibit 1

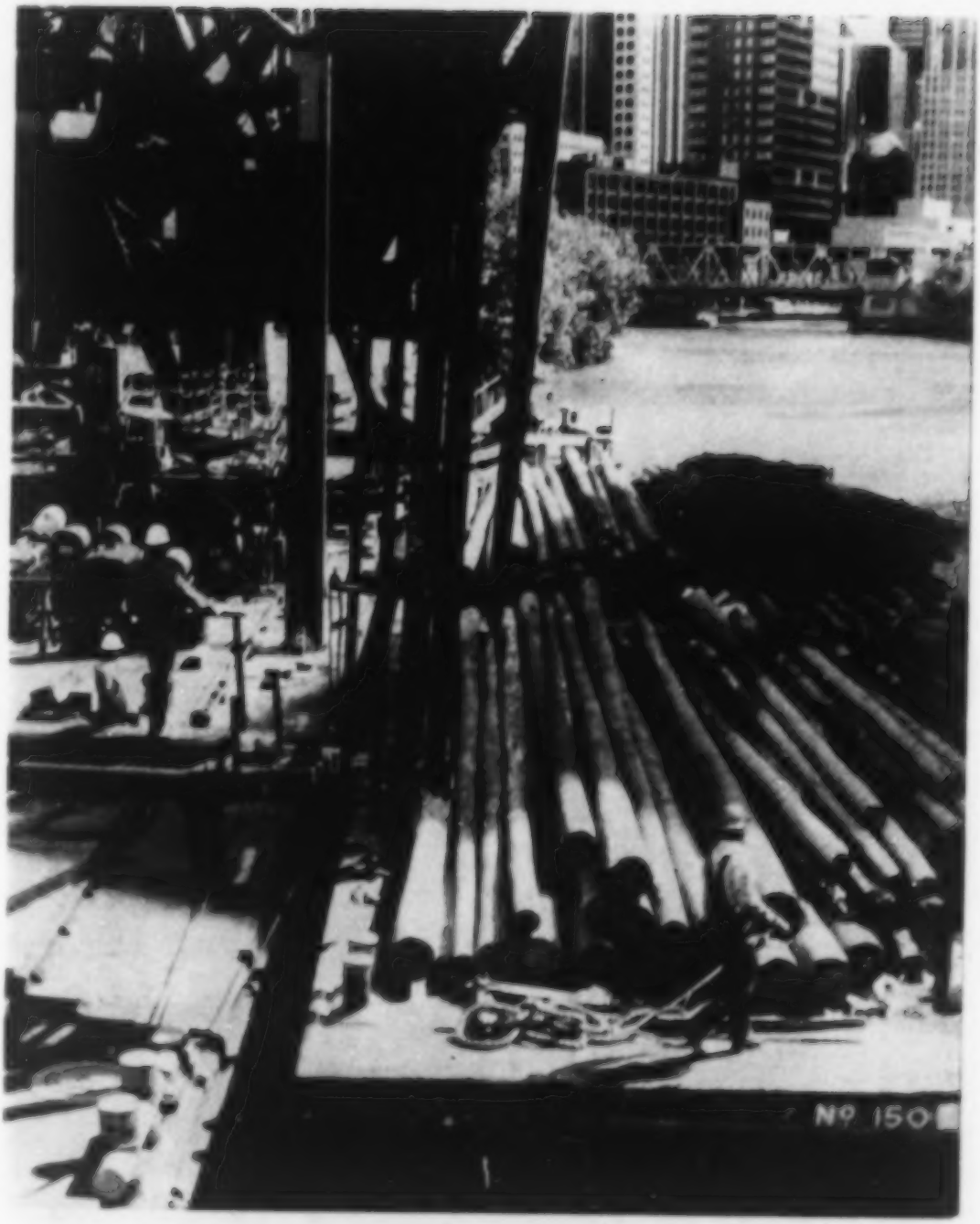


Exhibit 2

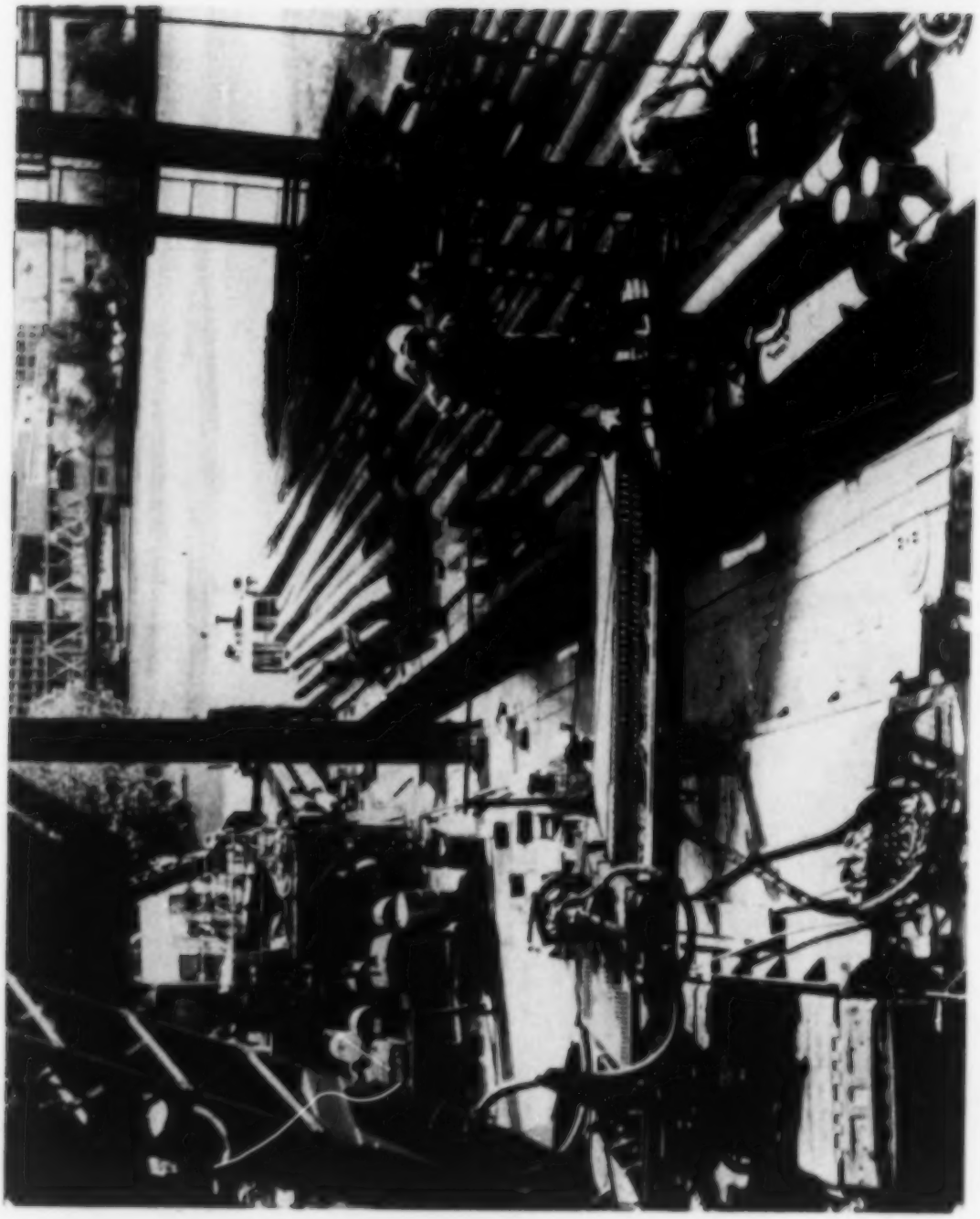


Exhibit 3

Exhibit 4

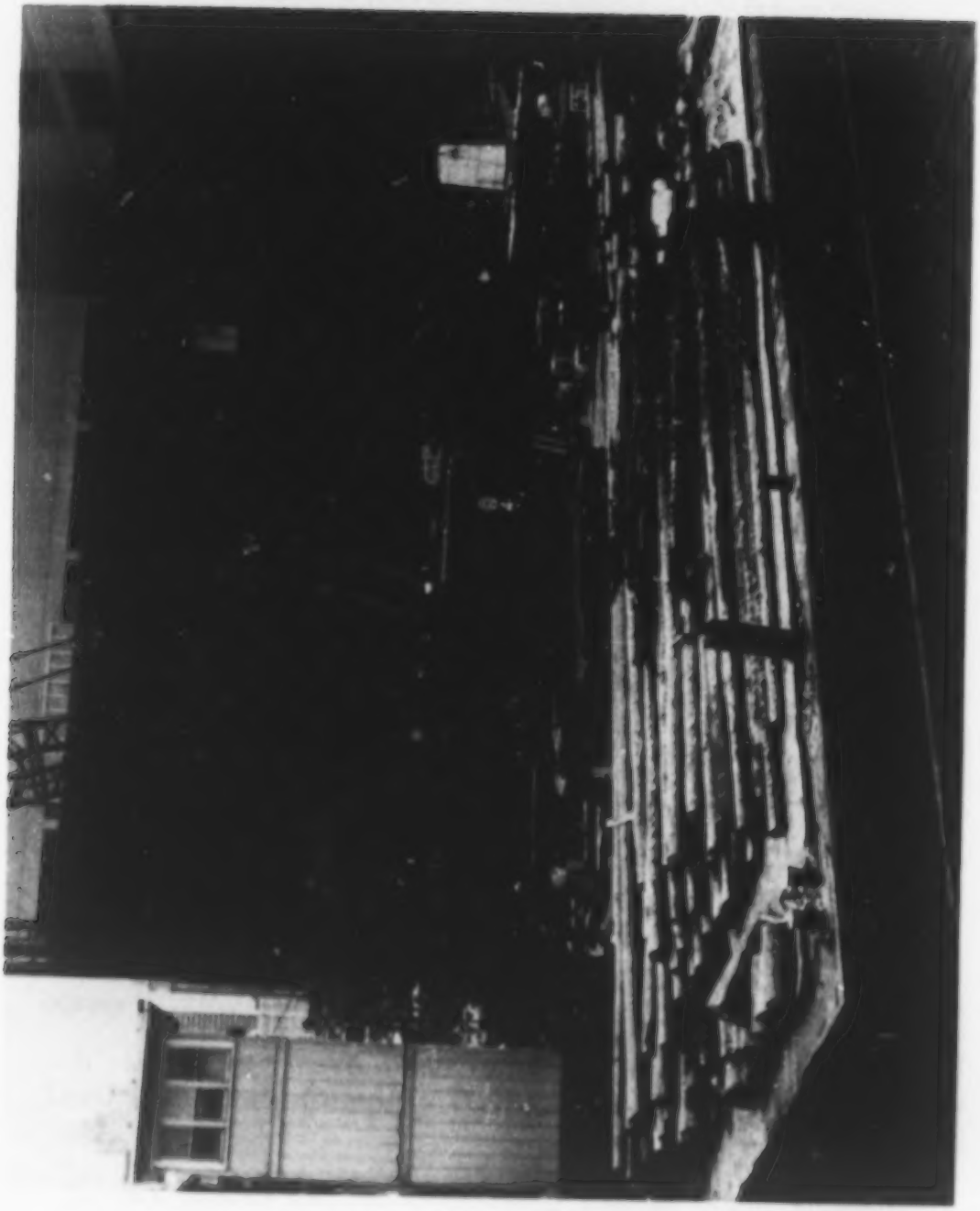


Exhibit 5

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Complaint of GREAT LAKES DREDGE & DOCK COMPANY for Exoneration from or Limitation of Liability	)	
GREAT LAKES DREDGE & DOCK COMPANY, Plaintiff,	)	IN ADMIRALTY
v.	)	No. 92 C 6754
CITY OF CHICAGO, an Illinois municipal corporation, Defendant.	)	Hon. Charles P. Kocoras

AFFIDAVIT OF WAYNE S. VALLEY

Wayne S. Valley being first duly sworn on oath, certifies under penalty of perjury that the following statements are based on his personal knowledge and are true and correct:

1. I am and have been employed by Great Lakes Dredge & Dock Company ("Great Lakes") since June, 1969.

2. My duties include overseeing marine construction and repair projects throughout the United States, including the project which is the subject matter of Great

Lakes' complaint. My duties do not include direct site supervision.

3. The City of Chicago solicited contractors like Great Lakes to bid on a contract to replace 14 deteriorated pile clusters (known as "dolphins") at five locations in the Chicago River, including the dolphins on the south side of the Kinzie Street bridge, and Great Lakes won the contract. As part of my marine construction project responsibilities, I attended the May 30, 1991 pre-construction meeting called by the City regarding the project. Attached as Exhibit 1 is a list of the attendees at this pre-construction meeting. The meeting was run by Frank Ociepka, the City's Project Manager for this project. Also participating for the City were Dennis Sadowski, the City's Coordinating Engineer, and James Bolster, the City's Resident Engineer. In preparation for that meeting I reviewed the specifications for the work to be performed. In addition, during the course of the work, I was in contact with City personnel on a variety of issues regarding the project. At no time prior to, during or subsequent to the pre-construction meeting, did anyone from the City of Chicago advise me, or anyone else at Great Lakes, as to the existence of the Chicago Freight Tunnel beneath the Chicago River near Kinzie Street.

4. Historically, dolphin repair, maintenance and construction projects, like the one in issue, have been undertaken by marine firms such as Great Lakes, Thatcher Engineering or Illinois Constructors. This is because the work must be performed from vessels in the navigable channel, and those vessels have to be moved from time to time to permit other maritime traffic to pass. The contract specifically required Great Lakes to comply with U.S. Coast Guard regulations protecting the right of other

vessels to navigate past the work site. (See ¶ 209 of Contract attached as Exhibit B to Grubart's motion. Attached as Exhibit 2 is a true and correct copy of the Notice to Mariners issued by the United States Coast Guard on June 14, 1991. Page 6 "of 7" contains the entry prepared by Great Lakes providing notice of the dolphin replacement project. Vessels affected by the work were directed to radio Barge No. G.L. 136 to request Great Lakes to clear the navigable channel.

5. Barge No. G.L. 136 and Barge No. G.L. 150 are barges owned by Great Lakes. The M/V PEACH STATE is a launch (also referred to as a tug boat) owned by Great Lakes. Attached hereto as Exhibits 3, 4 and 5 are true and correct copies of the United States Coast Guard's Certificate of Documentation for these three vessels, which show that each is registered for plying the Great Lakes and U.S. coasts.

6. These vessels were the three vessels employed by Great Lakes for the dolphin replacement project, including the pile removal and replacement near Kinzie Street which is the subject matter of Great Lakes' complaint.

7. Attached hereto as Exhibits 6 and 7 are the Load Line Certificates from the American Bureau of Shipping regarding both barges. The Certificates establish that these vessels have been surveyed and found in compliance with the Load Line Regulations of the United States Coast Guard, thereby certifying these barges for operation in the open, unprotected waters of the Great Lakes.

8. The M/V PEACH STATE is not required to be certified by the American Bureau of Shipping or the U.S. Coast Guard to enable it to operate in open waters.

9. Part of my job responsibilities include the assignment of those vessels to various work sites and projects.

10. Both prior and subsequent to the pile replacement project related to this litigation, Barge No. G.L. 136 has travelled throughout the navigable waters of the United States to perform a variety of assignments. Currently it is located in the Cuyahoga River near Cleveland, Ohio. In August, 1992 it was used for dredging the Buffalo River near Buffalo, New York. In March, 1992 it was employed in the Chicago Sanitary and Ship Canal near Interstate 294. During this time period, Barge No. G.L. 136 was towed on these rivers and Lakes Michigan, Huron and Erie.

11. Prior to the pile replacement project related to this litigation, both barges were engaged in a pile replacement project in November, 1990 near Ewing Avenue in the Calumet River. In October, 1990 Barge No. G.L. 136 participated in the salvage of a World War II U.S. Navy divebomber from the bottom of Lake Michigan more than 14 miles from shore. A photograph of Barge No. G.L. 136 in the open water of Lake Michigan taken during the Navy divebomber recovery project is attached hereto as Exhibit 8. (The tug shown in Exhibit 8 is the PAUL R. DICKINSON.) Photographs of Barge No. G.L. 150 in Lake Michigan are attached hereto as Exhibit 9. In September, 1990, Barge No. G.L. 136 was employed to obtain soil borings from the bottom of Lake Michigan off Lake Bluff, Illinois. In July, 1990 both barges were used to replace a failed dock in the Calumet River at 104th Street. In March, 1990 Barge No. G.L. 136 was used to repair a pipeline for Commonwealth Edison in Lake Michigan off Zion, Illinois. In February, 1990 it was sent to remove a compressor from a ship in Lake Calumet. In May, 1990 both barges were used to install a sheet piling bulkhead in Lake Michigan for Loyola University. In November, 1989 and December, 1988 Barge No. G.L. 136

was employed to place wave gauges in Lake Michigan. In May, 1988 both barges were in the Calumet River at 95th Street to remove a damaged bridge. In February, 1988 both barges were in the Main Branch of the Chicago River assisting with the construction of Chicago's Centennial Fountain. In October, 1987 both barges were assigned to replace a sheet pile wall in East Chicago, Indiana and to repair two lakefront cells in Lake Michigan at Gary, Indiana. In May, 1987 both barges were used to repair a pile fender system in the Calumet River. In February, 1986 they were used to construct new dock facilities at Burns Harbor, Indiana. In September, 1985 they were employed to replace a collapsed dock in Indiana Harbor, Indiana. In December and August, 1983 they were engaged in two dock construction projects in the Chicago River. In April, 1983 they were employed in the Calumet River to replace a damaged dock. In May, 1982 they were in Monroe Harbor, Illinois, for the construction of new docks at the Columbia Yacht Club. In July, 1981 the Barge No. G.L. 136 was in Lake Calumet to repair mooring dolphins. In each instance cited above and in paragraph 10, the barges were towed to and from each project over navigable waters.

12. Barge No. G.L. 150 is used primarily to transport cargo materials, equipment and/or excavation refuge [sic] to and from the various work sites. In the case of the pile replacement project at issue in this litigation, Barge No. G.L. 150 was used to bring new piles to the Kinzie Street work site and then to stow and later transport the old piles removed from the river away from the work sites for disposal. In the other instances referred to above, Barge No. G.L. 150 had been used to transport similar wooden piles to and remove old piles from the November, 1990 and May, 1987 pile cluster jobs on the Calumet

River. It was used to transport the sheet piling driven in Lake Michigan for the May, 1990 project for Loyola University. It was used to transport the construction materials used in the other jobs identified in paragraph 11 which involved the construction of dock or other facilities.

13. Barge No. G.L. 136 is used to transport various equipment placed upon it to execute the required work to be performed. Exhibit 8 to this affidavit shows it configured with, among other equipment, Great Lakes' Crane No. 16 for the retrieval of the Navy divebomber. The array of its marine communication system can be seen in the photograph near the stern. In the photograph exhibits to Lawrence Tieri's affidavit, Barge No. G.L. 136 is shown at the Kinzie Street site with Great Lakes' Crane No. 4. Depending upon the requirements of the specific project, different equipment is put on the barge.

Further affiant sayeth not.

/s/ WAYNE S. VALLEY
Wayne S. Valley

(Letterhead Of)

U.S. Department of Transportation
United States Coast Guard

LOCAL NOTICE TO MARINERS

Issued by: Commander, Ninth Coast Guard District (can),
1240 East Ninth Street, Cleveland, OH 44199-2060
Telephone: (216) 522-3991

[June 14, 1991]

* * * *

VIII. GENERAL NOTICES

* * * *

LAKE MICHIGAN - IL - Chicago River - North & South Branches - Bridge Maintenance, Chart 14927

Great Lakes Dredge & Dock Co. will be conducting bridge maintenance operations to the Cermack [sic] Rd, Madison St, Washington St, Kinsie [sic] Ave, and Chicago Ave bridges from 1 July until approximately 7 November, 1991. Operations will be conducted from 0700-1700 Monday-Friday. The spud scow 136 may be contacted on channel 10 & 16 VHF-FM. During operations the equipment will be positioned parallel to the channel along dock walls with a deck scow alongside. Equipment will be moved when necessary to facilitate vessel passage. The bridges will be worked in the above mentioned order. Caution is advised.[14/91]

* * * *

G. A. PENINGTON
Rear Admiral, U.S. Coast Guard
Commander, Ninth Coast Guard District

* * * *

Exhibit 2

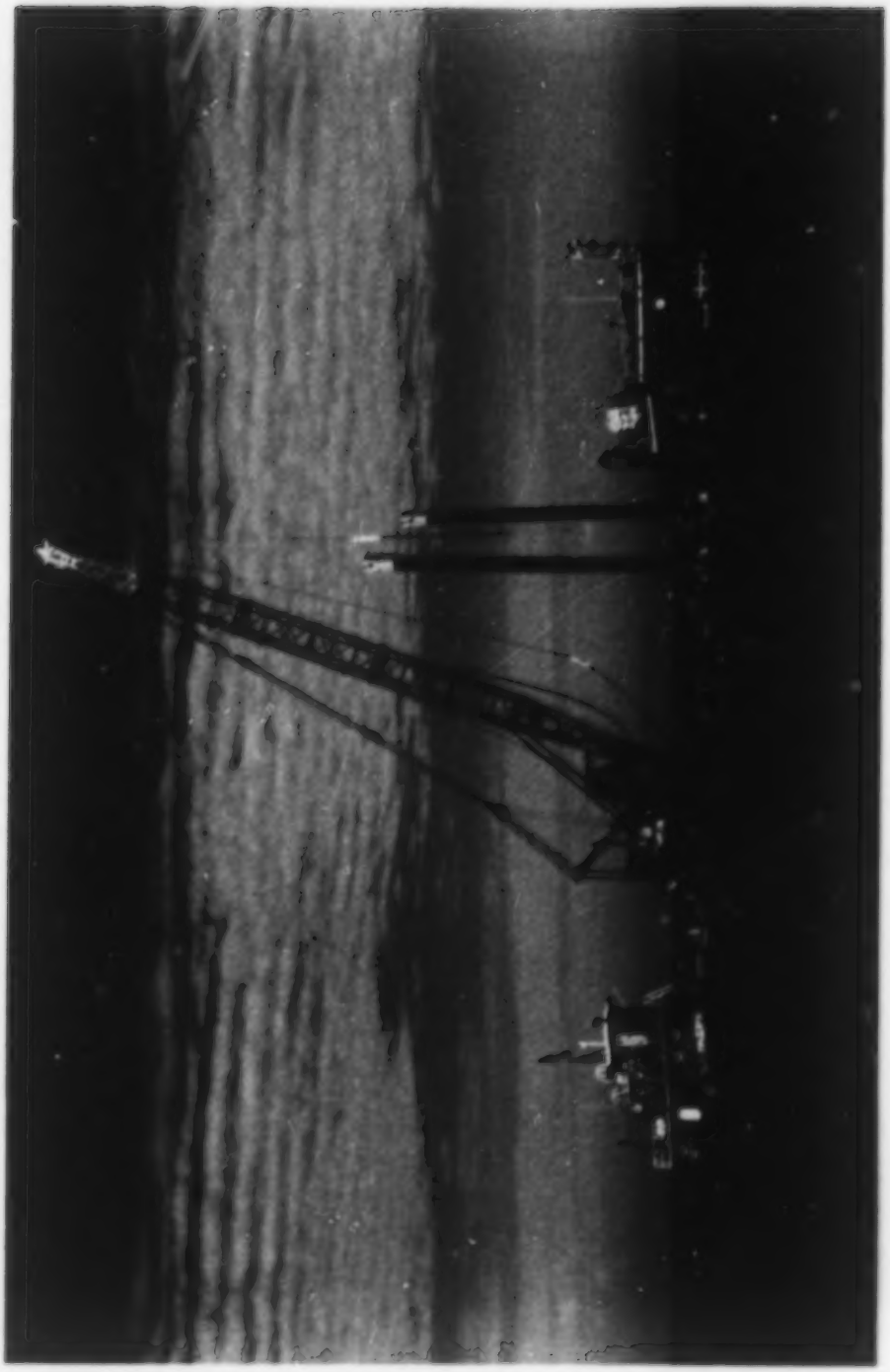


Exhibit 8

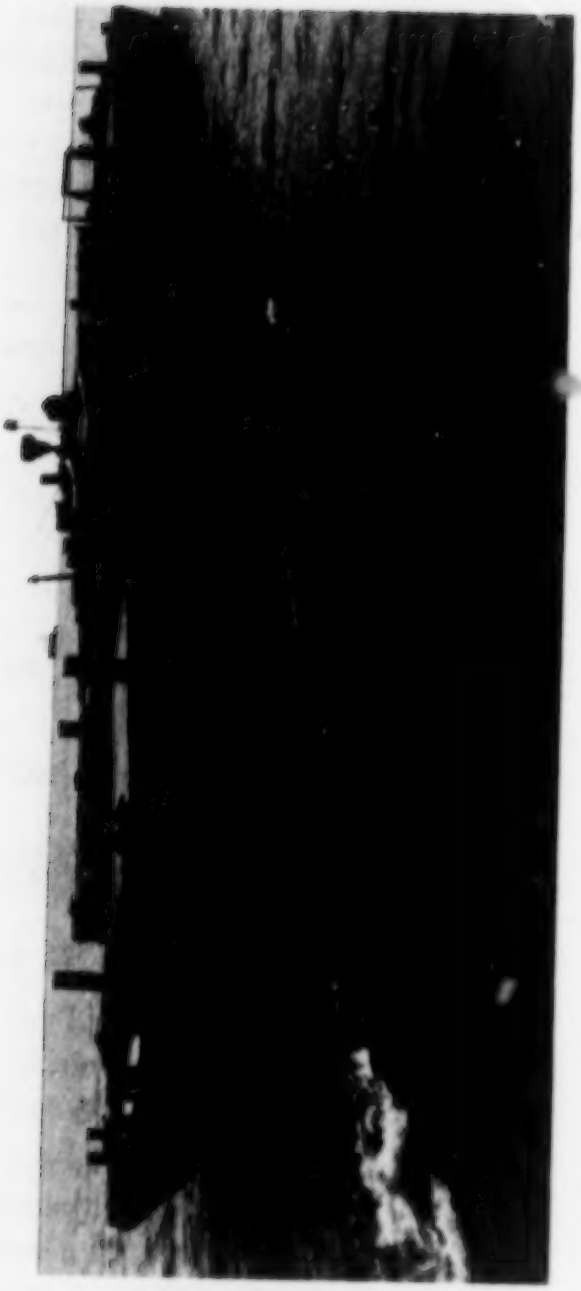


Exhibit 9

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Complaint of GREAT LAKES DREDGE & DOCK COMPANY for Exoneration from or Limitation of Liability	
GREAT LAKES DREDGE & DOCK COMPANY, Plaintiff, v. CITY OF CHICAGO, an Illinois municipal corporation, Defendant.	IN ADMIRALTY No. 92 C 6754 Judge Kocoras

AFFIDAVIT OF RICHARD H. HEISS

Your affiant, Richard H. Heiss, deposes and states:

1. If called upon to testify at a trial or hearing of this matter, I could and would competently testify to the following based upon my personal knowledge.

2. During my high school and college years, I spent summers working odd jobs in the barge shipping industry. I received a B.A. degree from Southern Illinois University in 1971. I have been a marine surveyor since 1973 when I began my career as a surveyor with employment by the firm of Hunt, Leitner and Company, Inc. In 1975,

I took a position as Chicago area maintenance coordinator with what was known as the S.C. and N.O. Barge Lines, and which has since been bought out by American Commercial Barge Line Company. In 1979, I took a position with Rose Marine Services engaging in marine surveying work. In 1981, I formed Independent Marine Services with a partner and I became sole owner thereof in 1988. Independent Marine Services is a marine surveying company. During my career as a marine surveyor, I have conducted hundreds of surveys of damages to vessels and land structures.

3. A spud scow is a specialized type of deck barge designed and utilized as a construction platform. It may maintain its position by dropping spuds into the bed of the waterway or, dependent on design, by lifting itself out of the water for maximum stability.

4. A dolphin is a wood or steel structure generally utilized for mooring purposes, whereas a pile cluster is constructed of wood and is used as either a protective structure or for mooring. A pile cluster is a group of wood pilings driven in a circular fashion and bound at the top with wire rope or chain. If a wood pile cluster is designed and installed adjacent to a bridge such as the Kinzie Street Bridge in Chicago, Illinois, its purpose is to afford protection to that bridge.

5. In normal conditions, a pilot of a towboat or tug which is towing/pushing barges on the river will not voluntarily contact or land on anything that can be avoided, including pile clusters. This is particularly the case with a big tow which will have a massive weight and which could very likely overcome the resiliency of a wooden pile cluster. Pilots would be concerned about claims against them for damaging the pile clusters and the structures

which the pile clusters are protecting. Pilots would also be concerned with damage to their vessels from obstructions on or around the pile clusters, particularly, any hidden obstructions on or around the pile clusters below the water level.

FURTHER AFFIANT SAYETH NOT.

/s/ RICHARD H. HEISS
Richard H. Heiss

VERIFICATION BY CERTIFICATION

Under penalty of perjury, the undersigned states that he has read the above and foregoing affidavit and that the statements therein are true and correct.

/s/ RICHARD H. HEISS
Richard H. Heiss